Supreme Court, U.S.
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(1)

91-1178

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991.

DeWAYNE W. BASHAM, *Petitioner*,

v.

L. A. BLANKENSHIP, in her individual capacity and as *"VISITOR"* of *MIKE'S HEALTH CENTER, INC.*; TOM HUNTER,, in his capacity as *RECEIVER* of *"CONTINENTAL FITNESS CENTER, INC. or associated corporations;"* CHERYL K. TRACY and JACK TRACY; BANK OF NEWCASTLE; FDIC in its corporate capacity, FDIC in its "LIQUIDATOR" of BANK OF NEWCASTLE capacity, INTERNAL REVENUE SERVICE OF THE UNITED STATES GOVERNMENT; UNITED STATES OF AMERICA; COUNTY TREASURER OF McCLAIN COUNTY; THE BOARD OF COUNTY COMMISSIONERS OF McCLAIN COUNTY; THE OKLAHOMA TAX COMMISSION; and THE STATE OF OKLAHOMA; *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

DeWAYNE W. BASHAM, pro se,
Suite AA-4043 3750 W. Main Street,
Norman, Oklahoma 73072-4645,
(405) 360-9247, Petitioner

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QUESTIONS PRESENTED FOR REVIEW

1. Does property use regulation require compensation under the U.S. Constitution's 5th or 14th Amendments, or 42 U.S.C. § 1983, if it totally eliminates value of private property?

2. Did state court error to retry its own unappealed final decision?

3. Did state error to award pro se legal fees based on any law, or under Kay v. Ehrler, 111 S.Ct. 1435 (1991)?

4. Was it error for the state court to decide a federal question in conflict to a decision of another highest state court, or a U. S. Court of Appeals?

5. Was it error, when the state court decided an important question of federal law which has not been, but should be, settled by the U.S.Sup. Court?

6. Did a federal right first accrue when state denied a federal right below?

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APPENDIX B

Certiorari denied; appellee's, Jack Tracy, motion for attorney fees denied, in the OKLAHOMA SUPREME COURT (FILED "SEP 19 1991").

APPENDIX C

Identification of parties in the suit by Continental Fitness Center PR, Inc., Continental Fitness Center PV, Inc. and Bank of Newcastle in Case No. C-84-373 In McClain County, a Plaintiffs against defendants identified in the appendix. Commenced by Robert G. Boren, attorney, who was hired expressly pursuant to ¶36 of the judicially executed compromise and settlement by

Case No. C-84-3's "Visitor", by actual execution of its 01/03/84 and 02/*06*/84 Orders, by its Visitor on 02/*07*/84.

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Information from the Case No. C-85-201 filed in the name of Bank of Necastle after it failed, although on the same day it failed 05/16/85 at 3:00 P.M. CST. It is one of cases consolidated below. Its Orders and the fact it was filed outside the C-84-3 and C-84-373 actions and after the bank failed sharpen points of dispute.

APPENDIX F

Quotations from undisputed affidavit

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APPENDIX G

Precise statements of issues preserved in the trial court, by statements in the Petition in Error below, quoted from Petitioner's Reply Brief filed June 27, 1991. Therein are issues Petitioner submits as questions that are identical or subsidiary questions to the four (4) presented on the page following the cover of this petition.

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15 O.S. § 29....8, 37, 38, 39, 52, 62
15 O.S. § 211.....29, 30, 32, 38, 39, 43, 52, 62, 64
16 Okla. Stat. §§ 16, 72, 74.....17, 23, 20

FEDERAL STATUTES:

11 U.S.C. § 101(25).....53
12 U.S.C. § 1823(e).....51
26 U.S.C. § 6672.....16, 26, 43
28 U.S.C. § 1257(3).....2

TREATISES AND LAW REVIEW ARTICLES:

Office of Comptroller of Currency, Ford Barrett, 44 Wash.Financ.Reports. June 10, 1985) at 993.....60

CONSTITUTIONAL PROVISIONS:

U.S. Constitution, Amendments V, VI, 2

U.S. Constitution, Amendments VII, IX 3

U.S. Constitution, Article III, § 2 [1] 3

Petitioner DeWayne W. Basham [hereafter *"Petitioner"* or *"De"*] respectfully petitions for a writ of certiorari, to review the judgment of the Supreme Court of the State of Oklahoma, issued on September 19, 1991.

OPINIONS AND ORDER BELOW

Decisions basic to this appeal were made by trial court February 1, 1989.[1] The "Memorandum Opinion" below issued 04/30/91. (See Appendix A) A timely petition for rehearing was denied July 1, 1991. Denial of certiorari issued from the Oklahoma Supreme Court 09/19/91.

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1 "Court Minute"

> ...Plaintiff Jack Tracy's motions for summary judgment are sustained. Defendant Basham's motions (all pending) are overruled. Plaintiff Tracy is awarded attorney fees (the amount will be determined on March 1, 1989 at 9:00) against Defendant Basham. All as per J.E. Court orders that J.E. is not to be circulated among parties: Plaintiff to draw same and submit it direct to the Court. cc: Tracy, DeWayne Basham - mail.

A "Journal Entry" appears in the "Supplemental Index" docketed in the Oklahoma Supreme Court 12/11/90. The date of the hearing appears "...and the _____ day of June, 1989". That blank is not filled in with what day?

(See Appendix B) It held "**Jack Tracy, motion for fees denied**". Mr. Tracy did not rebut Petitioners June 27, 1991 Reply Brief argument citing Kay v. Ehrler.[2] Despite that fact and case, Tracy and the trial court are now exerting executions and contempt on De for *pro se legal fees*.

JURISDICTION

Oklahoma's highest court's denial of petition for certiorari issued on September 19, 1991. This is timely.

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

1. This involves: U.S. Const., Amend. V;[3] U.S. Const., Amend. VI;[4]

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[2] Jack Tracy may not get pro se legal fees. Kay v. Ehrler, 900 F.2d; 111 S.Ct. 1435 (04/16/91).

[3] No person shall be...; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[4] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district

U.S.Const., Amend. VII;[5] U.S. Const., Amendment XIV,[6] U. S. Const., Article III, § 2 [1].[7]

STATEMENT OF THE CASE

A. Procedural Background.

Petitioner *"De"* was sued as a Defendant by Respondent/Plaintiff Jack Tracy. His claims based on "quit claim" assignments, a deed, from FDIC, following

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shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

5 In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

6 Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

7 The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States...or which shall be made, under their Authority; ...to Controversies to which the United States shall be a Party;...and between a State, or the Citizens thereof,...Citizens or Subjects.

its assumption of Respondent Bank of Newcastle's positions below; in the liquidation of that ***state bank***, in McClain County **Case No. C-85-200.**

Petitioner's motions were denied.

Honorable Noah Howard Ewing, Jr. [hereafter ***J. Ewing***], Associate District Judge, McClain County, State of Oklahoma, presided in the following actions, all IN THE DISTRICT COURT OF McCLAIN COUNTY STATE OF OKLAHOMA, that directly involve the first matter herein ***De*** entered into, the ***October 15, 1982*** express transaction; in Cases No: "*C-84-3*";[8] "*C-84-373*";[9] and all those filed all on *05/16/85*, "*C-85-*

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[8] IN RE: MIKE'S HEALTH CENTER, INC., APPLICATION FOR JUDICIAL *VISITATION* AND SUPERVISION Case No. "*C-84-3*". Filed January 3, 1984

[9] BANK OF NEWCASTLE, an Oklahoma banking institution; CONTINENTAL FITNESS CENTER PR, INC., an Oklahoma corporation; CONTINENTAL FITNESS CENTER PV, INC., an Oklahoma corporation; Plaintiffs, ***vs.***
MIKE'S HEALTH CENTER, INC., an Oklahoma corporation; ALBERT FEROLI, JOHN FEROLI, DEBORAH FEROLI, and MIKE FEROLI, as individuals, Defendants, vs.
Bank of Newastle, Richard A. Gray, Lou Ann Blankenship and DeWayne W. Basham, Cross-Petition Defendants, Case No. "*C-84-373*"

199"[10] "*C-85-200*",[11] Case No. "*C-85-201*".[12]

On February 9, 19*87* De filed Case No. "CIV-87-0265-P" [hereinafter referred to as "*265*"]. (See Appendix C) Therein, on 02/01/88 *former* Judge Layn R. Phillips dismissed Petitioners Amended Complaint for failure to state a cause of action and sanctioned Petitioners attorney (not De) $500.00. De perfected **10th Cir. appeals: Cases No. 88-1336 and 88-1343.**

Petitioner's Brief 11/09/89 below shows an appended copy of the "MOTION FOR SUMMARY DISPOSITION" 08/21/88, that

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10 Pearson's Lumber Yard, Inc., et al, Plaintiffs, *vs.* Continental Fitness Center PR Realprop, Inc., an Oklahoma corporation, et al., Defendants, Case No. "*C-85-199*".

11 IN RE: LIQUIDATION OF BANK OF NEWCASTLE Case No. "*C-85-200*" *FILED AFTER 3:00 P.M. 05/16/85*

12 BANK OF NEWCASTLE, a state banking corporation, vs. CONTINENTAL FITNESS CENTERS CORPORATION, an Oklahoma corporation; CONTINENTAL FITNESS CENTER PR REALPROP Inc., an Oklahoma corporation; CONTINENTAL FITNESS COMPUTER CORP., an Oklahoma corporation; CONTINENTAL FITNESS CENTER PR., INC., an Oklahoma corporation; and L. A. BLANKENSHIP, an individual, Defendants Cases No. "*C-85-201*" and C-85-202 consolidated, *FILED AFTER 3:00PM 05/16/85*

continues to **await a decision** in the consolidated 10th Cir. No. 88-1336 and No. 88-1343. An improvident dismissal, purporting a want of diligent prosecution, was filed by the Clerk of the 10th Cir.; on the pretense Petitioner had not timely filed an opening brief; while, force and effect of **Tenth Circuit Rule 27.2.3.** *tolls the running of the time for* Petitioner's brief therein. The purported dismissal, of De's 10th Cir. appeal is, therefore, ineffective.

Motions made in C-84-373 **01/04/85**[13] and **05/08/85,**[14] require decisions herein. Stipulations therein require decisions for De herein. The movants attorney, Robert G. Boren was engaged, pursuant to 02/07/84 ¶ 36 of C-84-3's judicially

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13 Reply, Answer, Motion To Dismiss, and Motion to Strike in: **Case No. C-84-373.**

14 Plaintiff's Brief in Support of Answer, Reply, Motion To Dismiss, Motion To Strike and ***Motions For Partial Summary Judgments***, "PARTIES, JURISDICTION, VENUE, STATEMENT OF FACTS"

executed express terms. Its intent is to prevent account churning, and breeding of litigation, thereafter, by forbidding more than one lawyer represent that precise ¶36 position. Any competent reading of it can not reach any other conclusion. That ¶ 36 is a paramount, catalytic ingredient, without which, that compromise[15] would not have been accomplished. Those covenants not to sue, were made by, and for parties, including De, that relied on that stated that intent. The bank and its attorney Robert Boren, were honest and true to that, then all who followed them deliberately reneged on and breached those settlement terms, on this record. The unappealed C-84-3 court's 1984 Orders carried into effect, through thousands of judicial

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15 TAYLOR v. GILMARTIN, 686 F.2d 1346 (10th Cir. 1982, cert. den. 103 S.Ct. 788).

executions.[16] Those ***stipulations*** to fact and law admit this: p. 2 ¶.[17] (See: Appendix K f.50) The 02/07/84 document names De on its face,[18] 15 O.S. § 29.

In C-84-373, Ferolis, with their attorney, dismissed their claims against De "with prejudice." Their disclaimers in "***265***" admitted all claims of fact and law by De.[19] (See: Appendix K f.51)

B. Identification of Parties.

1. Petitioner resides in Oklahoma.

2. Respondents/Appellees Jack Tracy and his wife Cheryl K. Tracy, were Plaintiffs the trial court. She totally abandoned appeals. He is an Oklahoma attorney acting pro se, throughout below.

3. Respondent United States of

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16 Bank's positions assumed in ¶49 p.14 04/08/85 Brief in C-84-373.

17 *City of Lawton v. Lewis*, 566 P.2d 133 (Okla. 1977)

18 "Plaintiff" Appellees Cheryl K. Tracy and Jack F. Tracy contend they are bona fide purchasers without knowledge...their claims stating on their face they are "***controlled by the February 7, 1984***" terms naming De [ON THEIR FACE at] ***ExB's ExL [R.118-160]***

19 Hanlon et al. v. McLain et al., 242 P.2d 732 (Okla.1952)

America, its IRS agency, FDIC corporate, and FDIC in its capacity as Liquidator of Bank of Newcastle in "C-85-200" (After "3:00 P.M. CST ***05/16/85***"), are joined.

4. They and other Respondents are identified on the cover of this petition.

C. Facts of Petitioner's Standing.

The Page and Line Numbers of the Transcript of ***02/01/89 proceedings*** below, entered in record *July 11, 1989*, are referred to as ["***T***"] and ["***L***"] herein.

De completed his purchase of interests in stock and other interests, and has a distinct standing as a personal "surety", under terms of the 02/03/83 transaction, as J. Ewing decided De fully performed to predicate C-84-3's Orders.

The 02/07/84 C-84-3 judicially executed matter says De owns interests.

TBV, Ltd. and Mr. Swanson have not been joined below. (T-24)

Petitioner's initial response, in C-85-201 below, made a prominent statement, p. 2 ¶2 Petitioner is not an attorney. (See: Appendix K f.53) Petitioners candor made certain he is asserting his own interests, under the doctrine of **Ross v. Bernhard**, infra.

1. General Statement of Facts.

J. Ewing's findings that De did, in fact, fully perform on 02/03/83, was indispensable to the decisions J. Ewing made in C-84-3 01/03/84 and 02/06/84. J. Ewing found, id., an ones of a duty to deliver the stock of MHC 03/01/83 was assumed by the sellers (*"Ferolis"*), with advice of their attorney named therein, Tom Smith; and that they were in default in their duties to De and Blankenship described in the 02/03/83 express terms.

Had J. Ewing's decisions *01/03/84* and *02/06/84* in *C-84-3 "Visitor Action"*

not premised his Orders thereon, and ordered immediate execution, as done by its Visitor *01/04/84*, *02/07/84*, and in thousands of other transaction on record below; on findings of fact that DeWayne Basham had so fully performed *02/03/83*; J. Ewing could not have accomplished causing De's reliance on the 02/07/84 compromise and settlement as J. Ewing, thus Oklahoma Courts, did in fact. By so obtaining De's reliance on that C-84-3's the state assumed responsibility for the *taking* of De's interests so perfected, by decisions below that offend those positions perfected for De in express and C-84-3 judicially executed terms. This invokes De's federal right for recovery on his "*takings*" theory.[20] (See Appendix

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20 At ¶1 p. 1 of De's opening appeal Brief 10/02/89 and p. 6 06/27/91 Brief:
Arkansas Louisiana Gas Co. v. Cable, 585 P.2d 1113 (Okla. 1978)
[1] Evidence of diminution in market value, arrived at by comparing market value prior to *taking* and market value

D) Green card returns of service, on the Secretary of State of Oklahoma, and the service agent, John Feroli; show jurisdiction established in the C-84-3 record, **30 days** in advance, of the Ordered 02/06/84 show cause hearing, id., **appeal time expired under 12 O.S. § 990.**

A $30,000 loan pledge was made on positions De ***owns*** in C-87-1049-T. It was paid off, its **cancelled original note** was delivered to De. This is proved[21] and undisputed below. Positions assumed by Bank of Newcastle ("***BANK***") when it paid of debt, to itself, of management of MHC ("***Ferolis***") and "Tri-City Health" owned by ***Ferolis*** with proceeds of a ***$135,056.72***

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after taking, where market value is expressed in terms of a particular suitable use, is admissible...

[2] Diminution in value of the remainder may be directly the result of the taking, such as here where usefulness of the surface is ***impaired by the taking***....Both direct and consequential diminution may be proved by testimony...

The Supreme Court would not consider matters raised for first time on appeal. (emphasis added)

[21] p. 22 in De's 12/30/88 affidavit.

07/09/82 ***ANK*** *"loan"*, were noticed to its regulators the same day, and that was done with the bank's official approval. The ***BANK*** presidents *02/01/84* affidavit admits all this, and in its referenced ***BANK*** *1980 thru 03-29-83* ***ledger***, attached thereto; also ***by all facts*** known by the ***BANK*** and ***by its*** C-84-373 ***attorney*** of record Robert G. Boren. All that was known by the ***BANK***, and its regulators, before ***BANK*** failed in C-85-200 *05/16/85*.

Facts, that attorney Bill Kuhns assumed duties, to tell the W.D.Okla. CIV-*265*-P Court, the truth of the ***express trusts***, ***limited partnership***, and ***corporation*** defendants therein, and the existent direct current, not contingent, interests that do (then and now) exist as De's interests in those juristic entities; then sold those entities wherein De is a party due proceeds from

their liquidation, for ***bribes***, was not discoverable by De before ***265***'s record closed on ***02/02/88***; are on this record. De's affidavits are undisputed on this.

Respondents do not deny veracity of, nor make material controversy of, any of De's ***08/17/87*** and ***12/30/88 affidavit facts*** and pleadings. E.g., ***Ex A-X*** and ***proof*** of express relations of De to Respondents and as in summary, p. 21-35 ***12/30/88 affidavit***. (p.9 ***PRH***)(***De's Brief 10/02/89*** ["***APB***"] p.1-8, f.20, f.61.) See: facts of ***coercion 12/30/88*** affidavit p.37-41. ("***false arrest***" "***strip searched***" "***repeatedly beaten***" p. 17 APB)

Certain undisputed facts exist in affidavits Petitioner filed in Case No. ***C-84-373*** 08/17/87. (See: Appendix K f.54)

The corresponding values Ex A admits the bank and its management misled Petitioner to invest in, from 10/15/82,

that De could not so foresee during De's detrimental reliance until at least 01/25/84, were in fact impaired, by the unlawful nature of the 07/08/82 loan that affidavit admits facts it was a sham, that resulted in this continuing trap of De's over $80,000 risk, his earned unpaid wages, and other considerations herein.

Respondents **did not plead essentials** to invoke jurisdiction cognizance to foreclose a ***mortgage***. De's 12/30/88 affidavit shows this. (See Appendix E)

Ever since De entered this 10/15/82, to pledge that over $80,000.00 judgment creditor interest of De, as a "***surety***", for the purpose of refinancing a certain 07/09/82 based debt; he was trapped. Petitioner relied on, until 01/24/84, Ferolis' false affidavit statements, saying the 07/09/82 loan was lawful, that verified Michael J. Feroli's and Deborah

J. Feroli's representations to De in the agreement 10/15/82, of the same date.

2. Full Faith And Credit.

Respondent United States of America, its IRS agency, FDIC corporate and FDIC in its capacity as Liquidator of Bank of Newcastle (3:00 P.M. CST ***05/16/85***), are joined as parties; for, among other reasons, the fact the IRS claims 26 U.S.C.A. § 6672 (withholding trust funds) are recoverable from Petitioner. When, in undisputed facts below, those funds were in fact held by Bank of Newcastle expressly pursuant to the ***judicially executed C-84-3 "Visitor"*** Orders, its 02/07/84 compromise and settlement, Cases C-84-3 and C-84-373, that successors of Bank of Newcastle first repudiated and reneged on after that bank failed at 3:00 P.M. ***05/16/85***. In other words, the IRS is seeking payment from Petitioner, for

funds the USA already got, through its other entity, the FDIC.

De clearly made a record on his standing on these points, that are, materially, undisputed below. See: De's June 27, 1991 "Reply Brief" p. 2 (f.8).[22]

Duties the Bank of Newcastle assumed pursuant to that 02/07/84 settlement the C-84-3 Visitor are ***judicially executed***. Including, a particular provision in its ¶*15* for its "***general warranty***", in the 02/07/84 document that names De as an intended beneficiary.

a. Record Land Titles.

The record is undisputed. Notices made pursuant to **16 Okla. Stat. §§16,72,74** noticed De's 10/15/82 and 02/03/83 express positions 01/17/83.

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22 "Plaintiff" Appellees Cheryl K. Tracy and Jack F. Tracy contend they are bona fide purchasers without knowledge...their claims stating on their face they are "*controlled by the February 7, 1984*" terms naming De [ON THEIR FACE at] *ExB's ExL [R.118-160]*

b. Four (4) Final Judgments.

Petitioner is supported by 4 final judgments. All final by virtue of the fact they ordered and carried into effect immediate execution on: ***08/08/82, 01/03/84, 02/06/84*** and ***10/08/84*** (***"The 4 Decisions"***). (De's Brief p. 3 ***06/27/91***)[23]

c. Undenied Affidavits (Summary Motions).

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23 De's is supported the ***4 final unappealed decisions*** of: ***1)*** Case No. ***C-82-1049-T*** ***08/09/82*** in ***Cleveland County*** (***APRB*** p. 2 ¶5), pronounced ***2)*** 01/03/84 entered ***01/04/84*** and ratified after the 30 day time of 12 O.S. §990 elapsed ***3) 02/06/84*** in Case No. ***C-84-3*** (***APRB*** p. 3 ¶9) ***4) 10/09/84 C-84-373*** (***APB p.5***). The ***C-84-3*** ***"Visitation"*** decisions were both final and immediately appealable. Kawfield Oil Co. v. Illinois Refining Co., 35 P.2d 961 (Okla. 1934)

> It is an order affecting ***substantial*** right. It is not an interlocutory order. It is final....It seems that by ***"visitation,"*** as ***applied to corporations***, is meant, in law, the act of a superior or superintending officer who ***visits a corporation*** to examine into its manner of conducting business and ***to enforce an observance of its laws and regulations.*** (emphasis added)
> (***APRB*** p.3¶9 12 O.S. § 990)

MANN v. STATE F. Mut. INS. CO., 669 P.2d 768 (Okla. 1987)

> [1] ... The exception *Reams* contemplated is before us here. The trial judge treated the "partial summary; judgment" as final, even though in its motion plaintiff asked for decision only as to liability and asked for damages to be submitted to jury, ***execution could have been levied on the judgment***. (emp. added) (See: Appendix K f.61)

Petitioners undisputed affidavit facts state a horror story. Coercion of Lou Ann Blankenship caused the direct result, of ***taking*** Petitioners whole valuable interest at bar. The disclaimers filed in CIV-87-0***265***-P by Respondents, The Board of County Commissioners of McClain County and County Treasurer of McClain County, do admit every point of fact, and law, asserted by Petitioner on that record, at the time they made that admission, by disclaimers. Disclaimers, in Oklahoma, are held to so admit opponents claims. Hanlon et al. v. McLain et al., 242 P.2d 732 (Okla. 1952). (See: Appendix K f.51) Precedent is, positions so assumed by those "subsidiaries" and their admissions are binding on the State of Oklahoma, for Petitioners ***takings*** and other claims: Okl. City Mun.Imp.Auth. v. HTB, 769 P.2d 131 (Okla. 1988).

"Appellants Brief", filed timely below on 10/02/89, cited HTB, id., p.20.

De's interests were held by Respondent Blankenship, in her various fiduciary capacities. The record below has De's unopposed sworn facts, Respondents are defalcating all Petitioner's interests in the juristic entities, wherein she acted as fiduciary for De's interests, as a direct result of other Respondents coercion of her, and without any consideration flowing De. Had Ms. Blankenship not been so coerced, by false arrest, or had Oklahoma Courts honored their own final decisions for De; De would have his valuable interests, rather than the pursuit of them herein.

De's interests were clearly ***taken*** by the state, by it admittedly using bogus criminal charges to force Ms. Blankenship into humiliating submissions, being strip

searched, repeatedly beaten, and held in custody, during years of this coercion, to chill the performance of her duties to Petitioner, and these juristic entities that hold his beneficial interests. How could this possibly not shock you? It is stated in De's undisputed affidavit facts, on this record 12/30/88. (See: quote from that affidavit in Appendix F)

Had Honorable Clarence Thomas been so confronted, by those affidavit facts, he has shown the world he would get on international television make sworn counter statements.

Silence, as a response, into the teeth of Petitioners summary motion affidavit facts, is tantamount to direct admissions of every point for De herein.

3. Respondents Reaction.

Only Respondents Jack and Cheryl K. Tracy made statements in the trial court

against Petitioner. Scrutiny of Respondent Jack Tracy's facts below, moreover show what he does not state, by sworn facts, to support his only conclusory statements. That leaves his conclusions unsupported, by proof or sworn or other facts, to support either trial court, or appeal court, decisions against Petitioner below.

Only Respondent Jack Tracy persisted on appeal. All other respondents absolutely abandoned their appeal.

Petitioner claimed and claims his right to prevail as to all Respondents who abandoned the appeals below.

D. The Trial.

In the 02/01/89 hearing, Petitioner alerted J. Ewing he had made the decisions he did in C-84-3 01/03/84, and 02/06/84, and that actual execution thereof resulted, in the 02/07/84

judicially executed Visitor transaction, with the Bank of Newcastle, and others that De is relying on. Based on its stating De is a party in interest, on its face. (T-8 L-9, T-9 L-5) De reminded the court the motions are still awaiting decisions in C-84-373 ever since January 5, 1985 and April 8, 1985. (T-10 L-25)

De cited estoppel precedent for his positions: **ATLANTIC RICHFIELD COMPANY v. STATE**, 659 P.2d 931 (Okl. 1983). (T-11)

De made claims to his **01/17/83** "16 O.S. § 74" **record title.** (T-11 L-15)

De asserted his ejectment standing, on Oklahoma precedent, that gives owners of only equitable interests, as well as owners of interests cognizable at law, standing to prosecute an action in ***ejectment***; even though ejectment is a purely legal cognizance action in Oklahoma jurisprudence; **Ramsey v. Conner**,

240 P.2d 107 (Okla. 1952). (T-22 L-14)

De cited ***Pemberton* v. Longmire**, 194 Okl. 311, 151 P.2d 410 (1944), and made an argument that the 07/09/82 sham "loan" is "void" by reasons stated, id. (T-25 L-21) Then, Respondent Tracy made irrelevant objection. (T-25 L-25) The courts attention is particularly called to his "***stand-up title opinion***" testimony. (T-28) This shows absolutely no attention was given, at all, to the paramount issues of importance, viz. the whole bundle of refinanced promissory notes is founded on the precise 07/09/82 "loan" that **Pemberton**, supra, precedent requires be regarded a "unlawful" whole and De's interests are noticed in record land title 01/17/83. Tracy's assertions constitute 12 O.S. § 2011 violations.

E. Federal Questions Properly Raised.

Petitioner is relying on U.S.

Supreme Court Rule 14.[24] De respectfully submits the questions presented shown in *"Appendix G"* hereto are good subsidiary, materially related, questions to the six (*6*) questions presented in this Petition.

Petitioner properly raised federal questions in the trial court. Petitioner's 12/30/88. (See the portions of these motions quoted in Appendix H)

Among those error questions, is Error *"ER" 32*. ***Ross, et al, Trustees v. Bernhard et al***.[25] It draws into direct issue the U.S. Const. 5th, 6th, 7th and 14th Amendment issues presented for

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[24] .1.(a) ...The questions...will be deemed to comprise every subsidiary question fairly included therein.

[25] Did the trial court err denying Basham a right to jury trial, pro se, advocating both his **direct and derivative rights at stake in this record**, offending the change in American jurisprudence that changed from disallowing to requiring, to satisfy the 7th Amendment to the U.S. Constitution, beneficiaries and shareholders to try issues at law to juries even in shareholder derivative actions where that had not been allowed before: ***Ross, et al, Trustees v. Bernhard et al***, 396 U.S. 531 (2nd Cir. 403 F.2d 909, reversed, 1970) cited in Thompson v. Kerr-McGee Refining Corp., 660 F.2d 1380 (10th Cir. 1981, Cert. Den. 102 S.Ct. 171)?

Certiorari herein. That issue was made by De's 12/30/88 motions.

The money IRS claims De owes it, under 12 U.S.C. § 6672, is among the same money the government ***took*** from Bank of Newcastle. De's affidavit asserts the over ***$333,333.33*** trust fund, embraced in the judicially execution of ***C-84-3*** (¶15 02/07/84) holding those funds, is since defalcated from IRS and De's interests. IRS, and all, made no counter-affidavit facts to oppose De's sworn facts 12/30/88 & p. 14. (See: Appendix K f.60) The 6th Amd. question is: does De have right to court appointed counsel by reason of IRS's assertion of 26 U.S.C. § 6672, thus its criminal counterparts? Petitioner claims he does, below and <u>now</u>. (T-10 L-5)

J. Ewing's C-84-3 01/03/84 Order, Mike's Health Center, Inc. is "***in choate***" was final, it issued execution

immediately. That requires dissolution proceeds to De. Later came the Respondents, who viciously asserted known malicious C-85-201 claims, against the settlement 02/07/84 C-84-3 executed.

Only De claims those ***dissolution proceeds***. The corporate veils should be disregarded. See: precedents cited in Mainord v. Sharp, 569 P.2d 546 (Okl.App. 1977). Id. De has existent positions:

> ***The shareholder's property rights are limited to a proportionate share of the dividends, and assets on dissolution.***

(See: Appendix K f.55) Especially, in light of Ross v. Bernhard, after its 180° American Jurisprudence change, construes 7th Amend. to require jury trial for De's issues; on this records facts. The juristic entity was decided *"in choate"* in C-84-3 01/03/84. The bank consented to C-84-3 02/07/84. In contrast, without

De's consent, the Continental Fitness entities are being operated by a "Receiver" without a C-85-201 Receiver's bond, which is fatal to any receivership, 12 O.S. §§ 1553, [3] Panama Timber Co. v. Barsanti, 633 P.2d 1258 (Okl.App.1980). (p.26 05/08/85 C-84-373). That damages De. De's Ross jury trial is invoked.

Therefore, it is a subterfuge, a shysters trick, to say De can not reach his interests because he is not a lawyer, so he can not get his right to jury trial protected by Ross v. Bernhard, supra.

De's interests in these juristic entities have been ***taken***, using ***coercion*** and ***duress***. By holding Lou Ann Blankenship, in virtual ***state*** custody, in a (undisputed below) trade off, that exchanges her freedom for a relinquishment, of every asset, of the juristic entities, to the self proclaimed

"successor", of these ill gotten gains, *taken* under the 07/09/82 sham "loan".

An impact that has cost Petitioner at least $80,000.00, plus lost wages, plus all other interests described. Most important of all, this has cost Petitioner, who is now 47 years old, most of the past 9+ years of his life, since he entered these transactions 10/15/82.

The question of "equal protection", under the 14th Amd.U.S.Const., was put squarely in issue by juxtaposing two sets of circumstances; where Oklahoma construed the same identical point of law in opposite directions against De: 15 O.S. § 211, ***Pemberton* v. Longmire**, supra. See: Facts and the cite, id. (T-25 L-18)

Based on findings of fact, that an officer receiving direct distributions of corporate loan proceeds, leaves the lender holding a "unlawful" "loan", under

15 O.S. § 211, citing ***Pemberton*** v. Longmire, supra; the Oklahoma Supreme Court, in its "UNPUBLISHED" ***No. 52,506*** and ***No. 56, 146*** decisions, did ***take*** from over $120,000.00 to $2,000,000+ from Petitioner. Had its decision in its No. 72,733 below been consistent therewith, it would have decided Respondent Tracy bases his claims on a promissory note (and its refinancings) that are all void and "unlawful" under 15 O.S. § 211 and **Pemberton v. Longmire**, supra. The record on this was preserved in Petitioners "Appellants Brief" ***10/02/89*** p. 29.[26]

Petitioners Briefs December 10, 1981, March 10, 1982, and March 29, 1982,

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[26] Collapse of First National Bank, N.A. of Oklahoma City, Bank of Newcastle, Security Bank of Norman, N.A., are all related to the serious undermining that does still erode the foundations of Oklahoma's banking and commercial communities. Being caused in material part by repudiation of Burns v. Ferguson [576 P.2d 784 Okl. No. 49,442 1978], supra, was "switched" 180 degrees opposite the Honorable Courts conclusion, id., finding the "10/23/73" loan did not close, id., to saying later it did in No. 56,146.

wherein his attorney is Bill J. Nunn, in No. 56,146; foretold how predictably catastrophic it would be for Oklahoma, and its largest bank if the $2,000,000.00 bank trust embezzlement was not remedied for De therein. Those predictions, that First National Bank of Oklahoma City, then the largest bank in Oklahoma, would collapse, if the court condoned, and encouraged, such practices; came true. Ripple effect of these catastrophes are still adversely impacting De, the public of Oklahoma and the United States of America. Certiorari here should restore these indispensable credit credentials.

Respondent Tracy still proceeds in execution pursuit of payment of ***pro se legal fees***; despite **Kay v. Ehrler**, supra. Id. Forbids pro se legal fees for attorneys. Equal protection provisions of the 14th Amd., and De's other federal

and constitutional protections, can not be satisfied without mandate to vacate orders for pro se legal fees .

Justice delayed is sure justice continuing to be denied, until this Petition is granted certiorari, and decisions below are reversed. This is necessary to end the atrocious delay, awaiting decisions on the Bank of Newcastle joint motions, with Continental Fitness Center *PR*, Inc. and Continental Fitness Center *PV*, Inc., pending and awaiting decisions below, ever since 01/04/*85*[27] and 05/08/*85*.[28] Decisions therein must favor De. Those still undecided C-84-373 motions, by Mr. Boren, were made prior to ***BANK's*** 05/16/85 liquidation in C-85-200. Mr. Boren is

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27 Reply, Answer, Motion To Dismiss, and Motion to Strike

28 Plaintiff's Brief in Support of Answer, Reply, Motion To Dismiss, Motion To Strike and ***Motions For Partial Summary Judgments***, "PARTIES, JURISDICTION, VENUE, STATEMENT OF FACTS"

the only attorney who ever had the requisite ¶36 authority, to act as an attorney who possess 5 Okl. Stat. § 5, to represent positions of Bank of Newcastle under the 02/07/84 C-84-3 judicially executed *compromise and settlement*.

De is entitled to assets held in for him in trust, and *in custodia legis*, under C-84-3's 02/07/84 express terms, IN RE FIRST CAPITAL MORTG. LOAN CORP., 917 F.2d 424 (10th Cir. 1990).

De's federal protections can not be honored without certiorari herein.

REASONS FOR GRANTING PETITION.

I. THIS COURT SHOULD GRANT REVIEW BECAUSE THE DECISION OF THE OKLAHOMA SUPREME COURT RAISES IMPORTANT FEDERAL QUESTIONS NOT DECIDED BY THIS COURT, THAT ARE MORE COMPELLING THAN IDENTICAL OR LIKE QUESTIONS NOW PENDING CERTIORARI BEFORE THE UNITED STATES SUPREME COURT.

Petitioner here seeks vindication of his rights protected by *full faith and credit* character unappealed decisions by the State of Oklahoma. Questions herein are similar to, and should be considered more compelling for certiorari than: **LUCAS v. SOUTH CAROLINA COSTAL COUNCIL** (SC Sup.Ct., 404 SE.2d 895) granted certiorari, **U.S. SUP. CT. NO. 91-453.** on the question.[29] De's question is: whether you would knock down Oklahoma's *full faith and credit* and character of final decisions, or uphold those protections provided for Petitioner by De's final judgments herein, based on *faith and credit* and settlement character C-84-3 1984 and C-84-373 decisions?[30]

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[29] Does land use regulation, pursuant to state's police power, require compensation under Constitutions Fifth Amendment if it totally eliminates value of private property?

[30] 1. Does property use regulation require compensation under U.S. Constitution's 5th or 14th Amendments, or 42 U.S.C. § 1983, if it totally eliminates value of private property?

The state decision in Lucas, supra, shows support for De's positions on facts herein, both by its majority and dissent arguments, authority and opinions.

In the trial court record, at page 65 in De's 12/30/88 motions, specific claim is made on federal conversion.[31]

Decisions below this Petition differ with the Fifth Circuit decision in FMC CORP. v. BOESKY, 852 F.2d 981 (7th Cir. 1988). Id. Shows, had the Fifth Circuit applied the conversion theory of Carpenter v. U.S., supra, to the facts at

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31 100. Federal conversion and/or embezzlement claims, if indeed Jack F. Tracy, Esquire, is successor to FDIC, he has a duty to preserve the confidential nature of the information, particularly the highly confidential customer information, that the 02/03/83 C-84-3 adjudicated conclusions show Basham was sold and vested with a current interest in the personal property assets of Mike's Health Center, Inc., in addition to having an interest in the option of the corporate stock therein decided he performed on the purchasers side of the option; on information and belief Jack F. Tracy, Esquire is either converting or embezzling that confidential information, for which Basham claims a right to jury trial to establish fact and size of liability, pursuant to DAVID CARPENTER, KENNETH P. FELLIS AND R. FOSTER WINANS v. UNITED STATES, 108 S.Ct. 316 (Nov. 16, 1987), 320. (See quote at f.29 therein)

bar here; they would have decided matters below in favor of this Petitioner.

Id. Involves part of FMC CORP.'s estate. This case involves the absolute entirety of estates, of juristic entities and De's position as an interested party.

Decisions below are in conflict with those granted certiorari in **BUCHANAN v. FIRST GIBRALTAR BANK FSB**, Ca. 5, 935 F.2d 83, U.S.Sup.Ct. No. 91-645. Id. Confirms this petition is good. De did not lend himself to "scheme or arrangement". Id. Involves one house, this sure involves every house and ***all*** property in Oklahoma.

References are made herein, and in the Appendix(s) of this Petition, to De's abbreviations used in De's appeal record below. (See: Appendix K f.58)

De's 10th Cir. Appeals are pending. (***APRB*** p.5 ¶11) The government has waived its positions in favor of De's positions

on appeal by abandonment. De's ***F.T.C.A.*** and other claims are good. (12/30/88 p.24-28) They are in the nature of unprivileged occupation, and possession, of real and personal property, and F.T.C.A. protected wrongful deprivation of investment backed economic expectations. The offenses are purely ones of torts[32] and ***defalcation.***[33] (***PRHF p.2-9***) De has 02/07/84 express benefit, 15 O.S. §29.[34] (12/30/88 p. 26, 27)(**APB** p.2, 16, 26) (De's Brief 10/02/89 p.

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32 Ingram v Lewis, 37 F.2d 259 (10th Cir. 1930, ***cert. den. 51 S.Ct. 1930***)

[7] It is legal ***duress*** for a trustee to refuse to turn over property to his beneficiary rightfully entitled thereto, except on condition of signing a release.

33 In re Edmond, 5 B.R. 172 (Bkp.W.D.Okla. 1980, at 175:

There is also no doubt that there was a "***defalcation***" in the application ***of*** the Neeley ***trust funds.*** In the case of ***In re Herbst D.C.***, 22 F.Supp. 353, the court, referring to § 17 of the former bankruptcy Act, defined "**defalcation**" as follows:

"... As used in this statute, "defalcation" means the failure of one who **has received moneys in trust to pay it over as he ought.** It is **a broader word than fraud, embezzlement or misappropriation**, and covers cases where there was no fraud, embezzlement, or willful misappropriation on the part of the bankrupt."

34 International Paper Co. v. Whitson, 571 F.2d 1133 (10th Cir. 1977)

16), ***Pearlman v. Reliance Inc. Co.***, 371 U.S. 132, 83 S.Ct. 2323; and **Begier v. I.R.S.**, 110 S.Ct. 2258 (1990).

De's interests are clearly protected 15 O.S. § 29, **Internat. Paper v. Whitson**, supra.[35] Government agents, ***not*** at a high level of policy making, do not have a "***discretionary***" exemption from liability to De; U. S. v. ***Gaubert***, 59 LW 4244, 111 ***S.Ct.*** 1267 (***03/26/91***). Precedent, id., ascribes F.T.C.A. liability to these actors, on De's ***prima facie case made*** record herein.

Assertions by Respondents against Petitioner, are all based on a ***07/09/82 "loan"*** that is, by every cognizable standard of law, based on a void "loan" ***under 15 O.S. § 211***, **PEMBERTON**, supra. The ***"Transactional Approach"*** doctrine, infra, requires that unlawfulness be ***sua***

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[35] International Paper Co., Id.

sponte remedied for De. Dycus v. Belco Indus., 569 P.2d 553 (Okl. App.2) Id. Cites "*sua sponte*" duty precedents.[36]

Decisions below *advocate Bribery* of Kuhns, - therefore all *attorneys* in "*adversary* process". That subverts courts, and advocates *fraud on the court*, against law and ethics, and is *actionable by De* by law: *In Re Tri-Cran, Inc.*, 98 B.R. 609. Id. Cites *Bulloch v. U. S.*, 721 F.2d 713 (10th Cir. 1983).

How serious is it, to put a dispositive weapon in the hands of every commercial, and political, adversary of the State of Oklahoma, to thereby subvert material underpinnings of the fabric that supports the USA? Judicial notices of impacts of Penn Square Bank of OKC and

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[36] [3,4] ...15 O.S.1971 § 211 which pronounces illegal all contracts "[c]ontrary to the policy of express law...And contractual *illegality must be inquired into on appeal whether raised by the parties or not.* Sigmon Furn. Mfg. Co. v. Massey, 192 Okl. 436, 137 P.2d 793 (1943). (emphasis added)

Oklahoma banks, as causes of real ripple effects on the nation's current banking crisis, begins to see how serious.

Cutting to the chase, De relied on Oklahoma's leading validation suit case, in a disastrous belief Oklahoma would honor C-84-3's final, unappealed, 1984 decisions. A reliance decisions below show is a financial suicide mission by anyone replying on: GENERAL MOTORS v. OKL. CTY. BD. OF EQUAL., 678 P.2d 233 (Okl. 1983). Id. Is cited on page 10 (f.9) of De's motions 12/30/88. (See "quote", id.[f.9] ***Appendix J*** hereto) The bottom line here is, De did rely on Oklahoma's honor and its General Motors decision, id. So did ***$7+ billion*** Beneficial Finance and its Delaware Bank, so rely on C-84-3 as De did, until J. Ewing, viz. Oklahoma, reneged thereon; with the direct disastrous consequence

Beneficial withdrew its financing from Continental Fitness entities. No fantasy, real world, this situation is a ***direct market comparable.*** New state and federal appraisal laws require it be cited, at least for commercial purposes. Until and unless this is reversed, Oklahoma's credibility is lost. It is now fair game, an easy mark, as is the USA, for every predator or competitor, in any commercial or political setting, who points to these decisions below, in world settings, as what is now expected out of Oklahoma.

II. PETITIONER HAS STANDING.

Petitioner's foregoing positions constitute a personal stake in the outcome so as to assure that concrete adverseness sharpens this presentation. De has sustained, and is in immediate danger of sustaining, the identified direct injury(s) as the result of the

challenged official conduct. De has standing under Article III of the U.S. Constitution,[37] and other standing.

Findings that De became fully vested, with the interests he bought *02/03/83*, were *essential* to C-84-3's *01/03/84* and *02/06/84* Orders. Respondents are "properly estopped to challenge them collaterally". WOODS v Sledge, 632 P.2d 393, **Bras v. First Bank**, 735 P.2d 329 (p. 44, 12/30/88)

The *08/08/82*, *01/03/84*, *02/06/84* and *10/08/84* Orders immediate execution, made them final, **MANN v. STATE FARM**, supra; **FirsTier Mortgage Co. v. Investors Mortgage Co.**, 111 S.Ct. 638 (1991).

De relies, as he has a right to do, on law existent at the documented times to govern the parties relations, **Superior Business v. U.S.**, 461 F.2d 1036

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[37] Baker v. Carr, 369 U.S. 186, 204 (1962)

(10th Cir. 1972).

De's interests, perfected in this record, exist first at law, second in equity, and have ***priority over tax liens*** as ***Wickersham***'s did, Superior Business., id. Except only the about $20,000.00 IRS is due from ¶15 Ex B, involving false **26 U.S.C. § 6672** claims (p.13 **APB**) on De by IRS for trust funds the government, USA/FDIC, got from the ***02/07/84 trust fund*** by taking over Bank of Newcastle.

Decisions opposed by De, that contradict The 4 Decisions De relies on, are void and should be vacated. ABC v. HUGHES, 609 P.2d 763 (Okl. 1980); ***Mabry*** v. Baird, 219 P.2d 234 (Okl. 1950); Aishman v. Taylor, 516 P.2d 244 (Okl. 1973); VAN SICKLE v. HOLLOWAY, 791 F.2d 1431 (10th Cir. 1986). This is jurisdictional, it is required to be done *sua sponte* at any time, Basso v. Utah

Power, 495 F.2d 906,909 (10th Cir. 1974).

De has "preferred status" in his "*surety*" and other positions as to *BANK*'s estate Mothersead v. American Sur., 22 F.2d *655*, (1928) cert. den. 48 S.Ct. 421; 6 O.S.§ 402, id. (See: Appendix K f.52)

The 02/07/84 sale of notes *with recourse required* *BANK* to escrow funds equal its 02/07/84 (Ex B) obligations. Office of *Comptroller* of Currency, Ford Barrett, 44 Wash. Financ. Reports. *June 10, 1985*) at 993. Respondents owe De more than is due, if any, to them.

The facts of Kuhn's bribery, and coercion of Ms. Blankenship were entirely extraneous to *265*'s record, closed *02/02/88*. That was not discoverable to De until later. This records facts, on that, proved De's instant actions are distinct from, arose, and first accrued after *265*'s trial court record closed

02/02/88. Williams v. Borden, 637 F.2d 731 (Okl. 1981). Certain of De's issues below were never in any other court.

The Oklahoma courts, by apparent selective amnesia, characterized De's claims below as the same that were dismissed in "W.D.OKLA. CIV-87-0*265*-P"; to conveniently shirk their duty to acknowledge, and act on, De's undisputed affidavit facts below, of the highly material facts, Kuhns took bribes, and facts of concerted ***coercions*** that proved, beyond any doubt, De's causes of action first accrued after ***265***'s, id., record closed. (See: ***Appendix I*** hereto)

De's 10th Cir. appeals can not be settled until his 08/21/88 motion for summary disposition, that tolls his brief time running, is decided therein.

Had Judge Phillips, id., known that Bill Kuhns, the attorney who assumed

duties to represent the Continental Fitness entities and the Visitor of Mike's Health Center, Inc., thus De's beneficiary and shareholder equitable interests therein; was taking bribes (as the record below shows without dispute); there is a reasonable expectation this would have been settled for De in 1988.

Bribery of Kuhns, by FDIC, has nexus to causation of damages to De's interests by FDIC's and Kuhn's concerted ***duress*** (p. 20 APRB2), Ingram v. Lewis, supra, so *coerced* Lou Ann Blankenship, and so obstructed justice being done by her as Visitor of MHC, by use of ***"threats"***, U.S. v. David Hall, 536 F.2d 313 (10th Cir. 1976); that she, and through **Kunns**, signed over to FDIC and others everything that belongs to corporate interests owned by De, without any consideration to De. De has a right to recover his interests

defalcated from these entities. These circumstances invoke a vested ***standing*** in De, ***Wachsler v. Florafax***, 778 F.2d 547 (10th Cir. 1985). (p.17 10/02/89***APB***)

III. RESPONDENTS HOLD FUNDS IN TRUST FOR PETITIONER THAT ARE, IN MATERIAL PART, TRUST FUNDS RESPONDENT IRS CLAIMS PETITIONER OWE TO THE IRS.

Petitioner relied on the facts the C-84-3 transactions were judicially executed and by its Visitor. De has a right to recover on the 4 final decisions and every transaction executed by the C-84-3 visitor, litigation ***compromises and settlements*** law: **TAYLOR v. GILMARTIN**, supra. (Id. p. 19 De's 12/30/88 motions)

Respondent Tracy has record problems he can not cure. He does not, and does not claim on the record, he has the $30,000 promissory note that was paid,

cancelled and delivered to De[38] (that still clouds the Cleveland County **No. C-87-1049-T** record). The record below shows the 02/07/84 C-84-3 settlement on the central recordation Oklahoma County records in 1984. The "quit claims" Tracy got from FDIC, lacks required ***original promissory note document*** character, to meet the statutory definition of a negotiable instrument, and *"the [Corporation] cannot be a holder in due course."* Sheppard Mall State Bank v. Johnson, 603 P.2d 1115 (Okla. 1979). Id. A fortiori, there can be no presumption, based on mere naked possession of copies of such documents that the Corporation, or Tracy, is entitled to assert rights under them. He may not now cure his

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38 At found at p. 22 in Petitioners 12/30/88 affidavit:

31. EX D a 11/30/82 loan from Bank of Newcastle endorsed by Basham later repaid and extinguished;

records defects.[39]

Decisions below impermissibly allow Respondent's claims and pleadings, both under and against,[40] and to breach, the precise 02/03/83 and *02/07/84* transactions, of the C-84-3's Order's executions, that makes De's case *on their face.*[41] (p.13 05/20/91 *PRH* Brief)

Respondents admit[42] De's positions

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[39] Arkansas Louisiana Gas Co. v. Cable, supra.

[40] De cites, at T-11 L-11: ATLANTIC RICHFIELD CO. v. STATE, 659 P.2d 930 (Okl. 1983)

> [4] While, ordinarily, in a quiet title suit the plaintiff bears the burden of establishing the *superiority of his own title*, rather than the weakness of his adversary's, (f. omitted) when both parties derive title from a common source in their respective ***chains*** of title, the plaintiff need only establish *a valid interest* in the title derived from the common source, *without necessity of showing the validity of the title in the common source...*
>
> [6] ...A party cannot claim both under and against the same deed. (emphasis added)

[41] Positions assumed by Bank of Newcastle, through its C-84-373 attorney of record, Robert G. Boren, April 8, 1985, states:

> ¶ 63 p. 18: ...Their pleadings that are conformed to and controlled (sic) by the statements made by them in those exhibits they incorporated into their pleadings by reference, as a matter of law arising from WILLIAMS v. Phillips, 406 P.2d 474 (Okla. 1965).

[42] Tracy states his claim is based on the documents, that shows on their face they are "***controlled by the February 7, 1984***" terms that name De [ON THEIR FACE at] ***Ex B's Exl. [R.118-160].***

are superior to mere "common sources of title". De's interests vested earlier.

IV. BANK's POSITIONS WERE ASSUMED BY RESPONDENTS

Respondents FDIC corporate and liquidator, Jack and Cheryl Tracy are in no better position than the ***BANK*** was before its liquidation. They admit on this record. They do not dispute De's ***facts***, that the ***BANK*** did not have an interest to protect, by reason of ***fraud in the factum*** (p.26 **APRB2**). See: **FDIC v. *REPUBLIC BANK* LUBBOCK**, 883 F.2d 427 (5th Cir. 1989); ***Olney* Sav. & Loan Ass'n v. Trinity Banc**, 885 F.2d 266 (5th Cir. 1989).[43] De ***proved*** the Bank, FDIC and

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[43] FSLIC acquired no right, title or interest that could be diminished, or defeated by the misrepresentations. *See Langley*, 108 S.Ct. at 402-403 (defense that renders instrument entirely void, as opposed to merely voidable, ***takes instrument out of the protection of § 1823(e)***); *Grubb v. Federal Deposit Ins. Corp.*, 868 F.2d 1151, 1158 (**10th Cir. 1989**)(instrument ***void***ed ***by entry of a judgment*** does ***not*** constitute a *"right, title or interest" if acquired later by* ***receiver***)...Because FSLIC TOOK over as conservator at a time when ***judgment had been entered by the district court***. .FSLIC had *no*

state bank regulators, all had contemporaneous knowledge, and that the true facts of ***03/29/82's sham loan*** bar use of 12 U.S.C. § 1823(e), by or under ***BANK***, as defined as ***fraud in the factum*** in **LANGLEY v. FDIC**, 108 S.Ct. 396 (1987). (See: Appendix K f.59) Id. The BANK, FDIC and Tracy did not have an interest to protect. A key distinction to recognizing this record is: the corporate entity Mike's Health Center, Inc.; by law, does not have knowledge of its managements self dealing misappropriation of its 07/29/82 loan proceeds. See: **MC CRAY v. SAPULPA PETROLEUM et al**, 2 cases @ 226 P. 875 (Okla. 1923).[44] (p.26 **APRB2**)

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greater rights in this appeal than Trinity and STM would have. (emphasis added)

[44] "Ratification is never implied where it appears that the corporation was ignorant of the facts which entered into the transaction alleged to be ratified. In seeking to hold a corporation liable for acts of an officer or agent, on the theory of ratification, the proof in order to establish such ratification must show that the corporation knew of the material facts of the alleged original transaction before any ratification will be implied.

The ***BANK*** presidents 02/01/84 ***affidavit (Ex A)*** proved ***BANK***, and its regulators, had knowledge of its sham, 15 O.S. § 211, Pemberton v. Longmire, supra, character, by the ***ledger*** thru ***03-29-83*** attached to ***verified*** therein. MHC and De, relying on Feroli's false 10/15/82 affidavits, did not have knowledge of, nor foresee, MHC officer's self dealing.

Petitioner asserted, and no one denied, bank regulators and officers knew, by records contemporaneous with disbursements 07/09/82, that the bank's 02/01/84 affidavit admits, was known by all seeing those records, to be an unenforceable claim of promissory note debt obligation claim, from its 07/09/82 originally corrupt sham capital basis up, through all its refinancings.

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[6] The parties having knowledge of this transaction being ***adversely interested*** in this transaction, their knowledge cannot be considered **knowledge of the corporation.** (emphasis added)

FDIC's, its attorneys, and Tracy's § 1823(e) "Shield", BFP and holder in due course arguments fail, and offend 12 O.S. § 2011, on this record. These are not close questions. Respondents assertions are ***known*** false statements, of ***fact*** and ***"well settled"*** Pemberton v. Longmire, supra, and other ***law***, in the sense *"well settled law"* is used in **WABAUNSEE v. HARRIS**, 610 P.2d 782 (Okla. 1980).

This record's facts show De is a victim of ***BANK*** of Newcastle, FDIC corporate and FDIC "Liquidator" all acting as ***insiders***, in ***control of MHC*** against Gaubert's "Policy", infra.; against policies of **6 O.S. 402** Mothershead, supra, **11 U.S.C. § 101(25)**, IN RE-SHICK OIL & GAS, INC., 35 B.R. 282 (1983). They, Cheryl Tracy and Jack Tracy ***assumed the liabilities, both ex contractu and ex delicto***, owed to De

pursuant to Oklahoma law of ***merger***: Cinocca v. Baxter, 400 F.Supp. 527 (E.D.Okl. 1975). Respondents are ***not BFP's without notice*** of De's interests.

V. PETITIONER'S SUMMARY MOTIONS.

De has a right to recover on the basis of his undisputed affidavit facts and summary motions, based on summary judgment law cited in Appendix A hereto. De should receive summary judgment(s), mandated to execute upon remand hereof.

VI. PETITIONER'S RIGHT TO JURY TRIAL.

De's state and federal jury trial claims are paramount. STATE V. CAMERON, 294 P. 104 (Okla. 1930). Jury trial of De's legal issues "***first***", before equity trial, is required, Lytle v. Household Mfg., Inc., 110 S.Ct. 1331 (1990).

De claims his 7th Amd. jury trial rights exist, under Ross v. Bernhard, 90 S.Ct. 733, 396 U.S. 531, 24 L.Ed.729 (2nd

Cir. 403 F.2d 909, reversed 1970), Error ("*ER*") 37. This was a first impression question for Oklahoma. Courts below misconstrued Ross and must be reversed.

VII. De's F.T.C.A. Jury Trial.

De has standing to prosecute his F.T.C.A. "counter-claims" without exhaustion of administrative remedies, U.S. v. DRINKWATER, 434 F.Supp. 457 (E.D.Va. 1977). To recover on acts by agents, at levels below policy makers, U.S. v. *Gaubert*, 111 S.Ct. 1267 (1991).

VIII. THE UNITED STATES SUPREME COURT IS IN A GOOD A POSITION TO CONSTRUE THIS RECORDS UNDISPUTED FACTS AND LAW.

De's positions are apparent without further research. Plain error exists.

Decisions below deny De his protected right to *access to the Courts*, Van Sickle v. Holloway, supra.

IX. THE "TRANSACTIONAL APPROACH" DOCTRINE

Had courts below honored procedures prescribed by Oklahoma, and in the Tenth Circuit, Petitioner would have had his motion sustained to join the Cases No. C-84-3 (that expressly predicated its 01/03/84 and 02/06/84 decisions that resulted in the 02/07/84 compromise and settlement and thousands of fitness center membership contracts made in reliance thereon) and C-84-373; they would have honored De's positions arising from the "02/03/83" transaction J. Ewing held Petitioner performed as a finding indispensable to those 1984 C-84-3 decisions; and they would have upheld Petitioners positions thereon, pursuant to the ***"TRANSACTIONAL APPROACH"*** defined in PETROMANAGEMENT CORP. v. ACME-THOMAS JOINT VENTURE, 835 F.2d 1329, (10th Cir. 1988).[45]

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[45] See: Appendix K f.56

De asserts the doctrine of offensive use of collateral estoppel on this record in support of all his positions herein; pursuant to **United States v. Mendoza**, 104 S.Ct. 568 (1984)[46] *"The Transactional Approach"* to *res judicata* precedent **PETROMANAGEMENT CORP.**, supra, McCray v. Sapulpa Petro., 21 F.2d 953 (8th Cir. 1927 cert den. 48 S.Ct. 213) and **Brown v. Felsen**, 442 U.S. 127, 99 S.Ct. 2205 (1979).

The *"transactional approach"* of **Petromanagement** requires decisions below, that deny De's motions to consolidate

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[46] United States v. Mendoza, 104 S.Ct. 568 (1984)

[3-7] Under the judicially developed doctrine of collateral estoppel, ***once a court has decided an issue of fact or law necessary to its judgment, that decision is conclusive in a subsequent suit based on a different cause of action involving a party to the prior litigation*** ...this Court in recent years has broadened the scope of the doctrine of ***collateral estoppel beyond its common law limits.*** *Ibid.* It has done so by ***abandoning the requirement of mutuality of parties,*** *Blonder-Tounge Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971), and by conditionally approving the ***"offensive"*** use of collateral estoppel by a nonparty to a prior lawsuit. ***Parklane Hosiery.*** (emphasis added)

C-84-373 and C-85-201, be reversed, to remedy the atrocity of the ***C-84-373 01/04/85*** and ***04/08/85*** motions still ***awaiting*** decisions that must be decided in this appeal. That must be done, in order to arise to the "dignity of a judgment", when scrutinized under **P.E.A.C.E. v. Okla. Nat. Gas Co.**, 568 P.2d 1273 (Okla. 1977). This could not be made any clearer, than by the fact that the federal court record from ***265***, still on appeal in the 10th Cir., sill awaiting decisions, on De's always undisputed motion for summary disposition replevin of Mike's Health Center, Inc. that; in fact, has those ***original stock certificates held in that court file***. Robert Boren deposited those certificates into that court's actual possession, after they were put in his possession, under execution of C-84-373's 1985 Order.

That executed decision was not appealed. It put that stock, where it still awaits a 10th Cir. decision, on De's pending 08/21/88 motion for summary disposition. Those stock certificates are still held on that record while the state and federal courts out of Oklahoma refuse to settle that issue, and January and April 1985 C-84-373 motions made before the bank failed 04/16/85. That is all a big public disgrace. (See: Appendix K f.57)

Those predispositions require, that this appeal, at this time, deal with and remedy this situation under precedent of: FirsTier Mortgage Co., supra.

If, for one fleeting moment, there is any doubt how public interested these matters are, it will vanish with Judicial notice of: Congressional Investigations revelations, of ***Heafy***'s involvement with ***Mr. Fail***, and the **Bluebonnet Savings**,

scandals in Dallas.[47] This record shows Mr. Heafy is the one who refused De's demands, face to face, that Heafy locate the over $300,000.00 in ***original fitness center membership contracts receivable***, that De found, and FDIC's investigative officer admitted, FDIC agent Jim Taggert carried off after he, without any warrant, broke into Continental Fitness's office in Purcell 11/05/85. De asserts his right to do discovery below. How corrupt was Heafy's FDIC operation, that bribed Kuhns? De has a right to know.

X. PETITIONERS STOCK AND CHOSE REPLEVIN CLAIMS ARE UNOPPOSED.

Only De claims his a right to REPLEVIN the Mike's Health Center, Inc. stock, and the corresponding rights to engage an attorney to prosecute its

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47 *p.1* THE JOURNAL RECORD OKC "*FAIL... THOMPSON... HEAFY PARTNERSHIP*." (July 25, 1990).

pending choses in C-84-373. De's affidavits, due process, and equal protection requires De's claim be honored as the prevailing party. See: **FIRST NATIONAL BANK AND TRUST CO. OF OKLAHOMA CITY v. NESBITT**, 598 P.2d 1197 (Okla.1979). Federal and constitutional assurances of equal protection and due process can not be honored without upholding this for De.

J. Ewing and Oklahoma's courts had a duty to consolidate Cases below No. C-84-3 and C-84-373 with C-85-199, C-85-201 and C-85-202, and to comport their decisions to the ***compromise and settlement*** done 02/07/84, that J. Ewing ordered the C-84-3 Visitor do. Those contradictions smack of bias, and offend full faith and credit doctrines De cited below, **VAN SICKLE v. HOLLOWAY**, 791 F.2d 1431 (10th Cir. 1986). Oklahoma's courts

reneged on and offend judicial transactions, and unappealed final court orders made 01/03/84, ordering immediate execution, that J. Ewing ordered therein in 1984; where that reneging is being done by courts below, with an **absolute lack of jurisdiction** to usurp their own decisions that support De herein.

XI. A CONTINUING CONSPIRACY.

Assertions of the 07/09/82 "loan", by all who ever made any claims under it knew, or sure should have known, were *extortionate, in se,* by reason of the fact the origin of its capital was so corrupted by acts against public policy, the "loan" was, by statute, 15 O.S. § 211, a void and unenforceable sham loan claim under Pemberton v. Longmire, supra. Its claimants exertions against De constitute an actionable conspiracy.

Exertions of an unlawful loan for

collection are extortion under **PEREZ v. UNITED STATES**, 402 U.S. 146 (1971).

That conspiracy continues, and is actionable by Petitioner until its harm to him as its victim ceases, on authority De cited at p. 27, June 27, 1991 Brief: Clark v. Sloan, 37 P.2d 263 (Okla. 1934).

CONCLUSION AND PRAYER.

De is trapped here since 10/15/82. He noticed all would be B.F.P.(s).

A complete absence of all jurisdiction exists in, C-85-201 to impair De's interests foregoing perfected[48] (See: Appendix K f.62)

Respondents are no way prejudiced.

Decisions below commit ***mistake(s)*** that require remedy. Anderson v. City of Bessermer City, 470 U.S. 564, 573 (1985).

Decisions below deny De his right to

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48 La Bellman v. Gleason & Sanders, Inc., 418 P.2d 949 (Okl. 1966); State v. A 1977 Chevrolet Pickup Truck, 753 P.2d 1356 (Okl. 1988)

access to the Courts protected by Van Sickle v. Holloway, supra. Decisions below deny De *full faith and credit* protections, id., he is due on his *adjudicated* positions and foregoing law.

The capacity occupied by Petitioner below is in his individual capacity, seeking to recover on his personal cause of action to: *1)* A discharge of malicius lien claims on No. *C-82-1049-T* CLEVELAND COUNTY judgment, and *2)* to receive dissolution proceeds of Mike's Health Center, Inc., pursuant to the decisions by J. Ewing in C-84-3 01/03/84 and 02/06/84 that expressly held that corporation to be (as it continues to be) "*in choate*", and the Continental Fitness entities. Only De claims a beneficiary interest in dissolution proceeds of the res of those entities, on this record.

Certiorari should issue herein.

Petitioner, DeWayne W. Basham, respectfully implores this High Court to grant his Petition for Writ of Certiorari; to apply the holdings of foregoing authority, to withdraw and mandate the vacating of the Decisions of the Oklahoma Courts in "C-85-199, C-85-201, and C-85-202"; to restore the decisions, executions and positions that favor Petitioner on this record; to sustain De's error positions on appeal; to award him reasonable damages, costs with all other remedy and relief due to him, at law or in equity.

Respectfully submitted,

DeWayne W. Basham 01/14/12

DeWayne W. Basham, pro se
3750 W. Main Street Suite AA-4043
Norman, Oklahoma 73072-4645
(405) 360-9247

201USD8

APPENDIX A

IN THE COURT OF APPEALS, DIVISION 4

STATE OF OKLAHOMA

JACK TRACY, successor in interest to FEDERAL DEPOSIT INSURANCE CORPORATION for BANK OF NEWCASTLE, a state banking corporation,

- Appellee,

vs.
No. 72, 733

CONTINENTAL FITNESS CENTERS NOT FOR PUBLICATION CORPORATION, an Oklahoma corporation; CONTINENTAL FITNESS CENTER PR REAL PROPERTY, INC., an Oklahoma corporation; CONTINENTAL FITNESS CENTER, P.R., INC., an Oklahoma corporation; LOU ANN BLANKENSHIP, a/k/a/ L.A. BLANKENSHIP, an individual; and BOARD OF COUNTY COMMISSIONERS AND COUNTY TREASURER OF McCLAIN COUNTY, STATE OF OKLAHOMA;

Defendants,

and

DeWAYNE W. BASHAM,

Appellant.

APPEAL FROM THE DISTRICT COURT OF
McCLAIN COUNTY, OKLAHOMA

Honorable Noah Ewing, Trial Judge

Jack F. Tracy, Attorney
Pro Se
Purcell, Oklahoma

DeWayne W. Basham
Pro Se
Norman, Oklahoma

MEMORANDUM OPINION
(FILED "APR 30 1991")

BACON, V.C.J.

This in an appeal by Basham of the sustention by the trial court of Tracy's motion to dismiss Basham for lack of standing.

Tracy acquired certain notes, mortgages and security agreements from the Federal Deposit Insurance Corporation as receiver of the Bank of Newastle. Tracy filed a petition to foreclose, followed by a motion for summary judgment against the makers of the notes, mortgages and security agreements and all

others claiming interest in the real property.

Basham was made a party based on a lawsuit filed in federal court where he sought relief through replevin, ejectment, quiet title, extortion, securities violations and RICO claims. His suit was dismissed in the federal district court as was his appeal to the circuit court of appeals.

Tracy filed a motion to dismiss Basham's answer and counter-claim for lack of standing. The trial court conducted a hearing February 1, 1989, at the conclusion of which judgment was granted foreclosing the notes, mortgages and security agreements, and finding that Basham had no interest in the real property and lacked standing to assert an interest on his behalf or as to others.

It is from this judgment that Basham

appeals. In his petition in error Basham lists one hundred and twenty-seven propositions of error. These are the same as or similar to those issues raised in other pending or previously adjudicated actions that had been consolidated by the trial court.

There is no substantial controversy as to any material issue of fact as to the foreclosure action, and Tracy is entitled to judgment as a matter of law. Flanders v. Crane, 693 P.2d 602 (Okla. 1983). The undisputed facts in the record disclose that Basham had no right, title or interest in the real property which is the subject of the foreclosure action and does not have sufficient interest or stake in the outcome to have standing. Thus, the trial court was correct in dismissing Basham's answer and counterclaim. In the Matter of Doan, 727

P.2d 574 (Okla. 1986).

The appellee's motion to dismiss this appeal and request for sanctions is denied.

RAPP, J., and STUBBLEFIELD, J., concur.

APPENDIX B

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

(FILED "SEP 19 1991")

72,733 Jack Tracy, successor in interest to Federal Deposit Insurance Corporation, receiver for Bank of Newcastle, a state banking corporation v.. Continental Fitness Centers Corporation, an Oklahoma corporation, et al.

Certiorari denied; appellee's, Jack Tracy, motion for attorney fees denied.

All Justices concur.

APPENDIX C

DeWayne W. Basham, in his individual capacity ("BASHAM"); in his capacity as president of Benst Corporation, an Oklahoma corporation ("BENST"); in his capacity as trustee of the L. A. Blankenship Irrevocable Trust ("IRREV"),

Plaintiffs

vs.

State of Oklahoma ex rel L.A. Blankenship, *Visitor* of Mike's Health Center, Inc. ("MHC"); Continental Fitness Center *Limited Partnership*, an Oklahoma limited partnership ("LTD"); Continental Fitness Center General Corporation ("GENERAL"), Continental Fitness Center PR, Inc. ("PR"), Continental Fitness Center PV, Inc. ("PV"), Continental Fitness Center PR Realprop, Inc. ("PR REALPROP"), Oklahoma corporations; and The BLANKENSHIP-BASHAM NOVEMBER 1982 TRUST ("1982 TRUST"); referred to hereafter in their separate capacities as "DERIVATIVE DEFENDANTS",

vs.

W.D.Okla. No. Civ-87-0265-P

Kim C. Snow, individually ("SNOW"); Richard A. "Rick" Gray, individually ("GRAY"); Alan Brinkley, individually ("BRINKLEY"); Durbin, Larimore & Bialick, P.C. ("DURBIN"); James K. Larimore, individually ("LARIMORE); Robert G. Boren, individually ("BOREN"); L. A. Blankenship, now known as L. A. Roberts, individually ("ROBERTS"); ROBERTS in her capacity as trustee of the L. A. Blankenship 1984 Revocable Trust ("REV"); The United States of America government

("USA"); the Small Business Administration of the USA ("SBA"); the Internal Revenue Service of the USA ("IRS"); the Federal Deposit Insurance Corporation ("FDIC"); the FDIC in its capacity as liquidator of Bank of Newcsatle ("FDIC BANK"); the Bank of Newcastle capacity occupied in litigation pending prior to its liquidation wherein its positions have been fixed from that time ("BANK"); the State of Oklahoma; the Oklahoma Tax Commission ("OTC"); the Board of County Commissioners of McClain County Oklahoma ("McCLAIN"); the City of Purcell ("PURCELL"); the Board of County Commissioners of Garvin County; The Garvin County Treasurer ("GARVIN TREASURER"); the City of Pauls Valley, Oklahoma, a municipal corporation ("PAULS VALLEY"); Junita Griffith, individually ("J. Griffith"); Sherrell D. Griffith, individually ("S. GRIFFITH"); E. Smith hester individually ("HESTER"); Darlene Wynne, individually ("WYNNE"); Neil W. McElderry, Jr. ("MC ELDERRY"); Paul S. Sargent and Meridith A. Sargent, husband and wife ("SARGENT"); Michael J. Feroli and Deborah Feroli, husband and wife, Albert Feroli and Katherine Feroli, husband and wife; The T. H. Rogers Lumber Co., a Missouri Corporation ("ROBERS"); Allen McGuire, in his individual capacity ("McGUIRE"); McGuire Brothers Plumbing and Heating, Inc., an Oklahoma corporation ("McGUIRE BROTHERS"); Glenn Gill, in his individual capacity ("GILL"); Glenn Gill Electric, Inc., an Oklahoma corporation ("GILL ELECTRIC"); Duncan Builders Supply, INc., an Oklahoma corporation ("BUILDERS"); Tri-City Health Center, Inc., an Oklahoma corporation ("TRI-CITY"); Ray Babb in his capacity as

trustee of the Chapter 7 bankrputcy of ROBERTS ("BABB"); Allied Oklahoma Bank, N.A. ("ALLIED"); and Does 1 through 99;

Defendants.

APPENDIX D

(Filed Court Clerk McClain County

Jan 3, 1984)

IN THE DISTRICT COURT OF MCCLAIN COUNTY

STATE OF OKLAHOMA

IN RE:)
)
C-84-3
MIKE'S HEALTH CENTER, INC.)

ORDER APPOINTING VISITOR

On this 3rd day of January, 1984, and upon the verified Application of L. A. Blankenship for the appointment of her as Visitor of the Corporation, Mike's Health Center, Inc., the Court finds that cause exists for the exercise of the jurisdiction of this Court by the appointment of a Visitor over said Corporation and that said L. A. Blankenship is qualified to serve as the Visitor of said Corporation.

IT IS THEREFORE THE ORDER OF THIS

COURT that L. A. Blankenship be designated and appointed Visitor of said Corporation for the purpose of continuing the business heretofore conducted by said Corporation and to do all things necessary and proper for the conduct of said business. Said Visitor is further specifically authorized to file a Corporate Franchise Tax Return and to do al things necessary to put the Corporation in good standing with the Secretary of State of the State of Oklahoma. Said Visitor is further hereby authorized to negotiate on behalf of the said corporation with any and all creditors of said Corporation to ratify past business acts of the Corporation and to enter into such binding contracts with third parties as may be determined in her sole discretion to be in the best interests of said Corporation. Said

Visitor, L. A. Blankenship, shall, from time to time, report to this Court all significant activities performed by her as Visitor herein, said reports to be filed on at least a quarterly basis.

IT IS FURTHER THE ORDER OF THIS COURT, upon reinstatement of the Corporation's license to do business in the State of Oklahoma, said Visitor is authorized to designate herself as the registered agent of said Corporation by filing amended articles of said Corporation so designating.

IT IS THE FURTHER ORDER OF THIS COURT that this Order shall be effective immediately upon entry hereof, provided however, any person having any objection to this Order or any part hereof may present same to this Court on the 6th day of February 1984, at 1:30 O'clock p.m. All such objections shall be made in

writing and served upon the attorney for Applicant by certified mail or by personal delivery no less than five (5) days preceding the 6th day of February, 1984.

The Clerk of this Court shall cause service of the Application of this Order to be made upon the Secretary of State of the State of Oklahoma, as well as upon the last known service agent of said Corporation according to the records of the Secretary of State, said service to be made by certified mail. /s Noah Ewing "DISTRICT JUDGE"

O.K.:

/s Terry Guy Shipley
304 S. Main St., P. O. Box 636
Noble, Oklahoma 73068
(405) 236-1200 Attorney for Applicant
L. A. Blankenship

(Filed Court Clerk McClain County

Feb 6, 1984)

IN THE DISTRICT COURT OF MCCLAIN COUNTY

STATE OF OKLAHOMA

COURT MINUTE

Judge Noah Ewing
Date: 2-6-84

Applicant appears by her attorney Terry Shipley for show cause hearing. No objections having been filed and no other objections having been made, applicant is hereby authorized to continue in the capacity as visitor until further order of this Court.

cc: Terry Shipley s/ Noah Ewing

The "APPLICATION FOR JUDICIAL VISITATION AND SUPERVISION" is entered, January 3, 1984. Petitioner was present in person when J. Ewing rendered his decision thereon, in

chambers with Lou Ann Blankenship and her attorney, Terry Guy Shipley. Averments sustained in the 01/03/84 and 02/06/84 decisions sustain the application and its particulars:

> 4....Attached hereto, marked Exhibit A and made a part hereof is a true copy of the said October 15, 1982, agreement...
>
> 5. On the 3rd day of February, 1983, the same parties as entered in the October 15, 1982 agreement supplemented said agreement with additional written agreement, which said agreement became effective march 1, 1983...

The record shows copies of both the 10/15/82 and 02/03/83 referenced "agreements" and show on their face Petitioner De is a subscribing party without whose performance 02/03/83

neither the 02/03/83 agreement would have been entered into nor would J. Ewing have sustained that application as he did.

9. By virtue of the suspension of the corporate charter above referred to, the status of Mike's Health Center, Inc. is inchoate...

APPENDIX E

IN THE DISTRICT COURT

OF

McCLAIN COUNTY STATE OF OKLAHOMA

BANK OF NEWCASTLE, a state banking corporation,

Plaintiff,

vs.
C-85-201

CONTINENTAL FITNESS CENTERS CORPORATION, an Oklahoma corporation; CONTINENTAL FITNESS CENTER PR REAL PROPERTY, INC., an Oklahoma corporation; CONTINENTAL FITNESS PV, INC.; Oklahoma corporation; CONTINENTAL FITNESS COMPUTER CORP., an Oklahoma corporation; CONTINENTAL FITNESS CENTER, P.R., Inc., an Oklahoma corporation; and LOU ANN BLANKENSHIP, a/k/a L.A. Blankenship, an individual,

Defendants.

Consolidated by Order
Dated Febrauy 21, 1986
Docket 26, Page 303

BANK OF NEWCASTLE, a state banking corporation

Plaintiff,

vs.

C-85-202

L.A. BLANKENSHIP,, aka LOU ANN BLANKENSHIP,

Defendant.

AFFIDAVIT
IN SUPPORT OF THE FOLLOWING

STANDING OF DeWAYNE W. BASHAM TO MAKE A SPECIAL APPEARANCE AMENDED OBJECTION TO JURISDICTION
OR
IN THE ALTERNATIVE
ANSWER TO AMENDED PETITION, COUNTERCLAIMS, CROSS-CLAIMS COUNTER-MOTIONS FOR SUMMARY JUDGMENT DEMAND FOR JURY TRIAL
AND
MOTIONS FOR SUMMARY
IN RESPONSE TO THE MOTION
JACK TRACY'S "MOTION TO DISMISS DEFENDANT DeWAYNE BASHAM
FOR LACK OF STANDING
AND
THE PENDING MOTIONS FOR SUMMARY JUDGMENT BY JACK TRACY SET FOR HEARING IN "C-85-201"
"JANUARY 4, 1989" AT 9:00 O'CLOCK A.M.
SET FOR HEARING ON FEBRUARY 1, 1988 AT 9:00 O'CLOCK A.M.

MOTION TO CONSOLIDATE
CASES NO. "C-84-3" AND "C-84-373" IN MC CLAIN COUNTY
STATE OF OKLAHOMA
WITH C-85-199, C-85-201 AND C-85-202

IN THE EVENT THE MOTIONS TO JOIN "C-85-199"
WITH "C-85-201" AND "C-85-202" ARE SUSTAINED
IN "C-85-201"

LEAVE TO FILE:
AMENDED OBJECTION TO JURISDICTION
WITH OBJECTION TO
THE PENDING MOTION SET FOR HEARING IN "C-85-201"
TO HEAR "JANUARY 4, 1989" AT 9:00 O'CLOCK A.M.
JACK TRACY'S "MOTION TO DISMISS DEFENDANT DeWAYNE BASHAM
FOR LACK OF STANDING
OR
IN THE ALTERNATIVE
AMENDED ANSWER, AND ADDITIONAL PLEADINGS

MOTION TO APPOINT
A QUALIFIED ATTORNEY
TO REPRESENT THE POSITIONS OF
JURISTIC ENTITIES WHEREIN BASHAM IS AN INTERESTED PARTY
AND
TO REPRESENT DeWAYNE W. BASHAM IN HIS SEPARATE
INDIVIDUAL CAPACITY

APPENDIX F

63. Reference to legal authority herein is for the purpose of providing precise meaning to the words used and to, by analogy to circumstances so referenced, provide clear illustration of what is meant by the statements of facts herein.

64. On information and belief, Lou Ann Blankenship Roberts served faithfully in the discharge of her duties in her representative capacities throughout the times she committed voluntary acts; then, on and after 11/06/85, as a result of duress and coercion by defendants in 265, either exerted by negligence and/or intentionally, extracted involuntary servitude, in the precise sense the words "coerced" are used in context to extracting involuntary statements under coercion in HALL v. OCHOS, 817 F.2d 920

(1st Cir. 1987),(wherein 42 U.S.C. § 1983 actions were upheld for extracting involuntary waiver of rights in exchange for release from custody, citing ***Johnson v. Zerbst***, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)) and "involuntary servitude," in the precise sense those words are used in UNITED STATES v. WARREN, 772 F.2d 827 (11th Cir. 1985). Accompanied with an element of repeated beatings, that, on information and belief, on at least one occasion she received with such force she was "knocked through a wall." Circumstances that affiant asserts would have resulted in the majority joining the dissent on precise grounds of physical violence in: UNITED STATES v. KOZMINSK et al, 821 F.2d 1186 (6th Cir. 1987). A physical abuse that affiant is informed first ended on or about the time of the divorce action

resulting in entry of a Decree of Divorce of David M. Roberts from Lou Ann Roberts, of their marriage on February 18, 1986, entered April 11, 1988 in CASE NO. JFD-88-138 IN THE DISTRICT COURT WITHIN AND FOR CANADIAN COUNTY, STATE OF OKLAHOMA. Based on that information and belief, affiant asserts that the "involuntary servitude" of ROBERTS, in all her above capacities, and difficulties in affiant being able to realize the valuable good will enjoyed before concerted bad faith and malicious acts begun by sneak surprise attack, by Bank of Newcastle's first act of total repudiation of the 02/07/84 C-84-3 "agreements" are the direct and proximate cause of every act and statement made by ROBERTS or any party purporting to represent her opposing Basham in any business or litigation matter, commencing first after

12/13/85.

65. The disclaimers entered by McClain County and Garvin County into 265 05/08/87 admit facts that confirm the Counties have admitted knowing a conviction for willful intent to defraud wage earners and to dishonor a $55.00 check could never have qualified for a conviction of the criminal complaints asserted by those counties against ROBERTS. By admitting the veracity of Bashams assertions that the now over $333,000.00 trust fund arising 02/07/84 (Ex B) has been wrongfully embezzled from the interests of Continental Fitness Center PR, Inc. and Continental Fitness Center PV, Inc. ever since 05/16/85. That, had those funds not been so misappropriated; the wage claims and the insufficient $55.00 hot check felony charges that, on information and belief,

resulted in the terrorizing of Lou Ann Blankenship, by her being arrested, handcuffed, incarcerated, strip searched, and told that if she did not submit to indignities and involuntary submissions and involuntary acts, she would be allowed to be transported to Purcell, Oklahoma, where, she was persuaded a murder plot was in progress if she did not do exactly what Bill G. Kuhns, Esquire and David Roberts told her to do. She was so convinced she would be killed to subvert the racketeering assertions she was making through Larimore in CIV 85 48B, she submitted to their manipulations that led her to abandon CIV 85 48B. That led, by direct and proximate cause, to her continuing terror of doing any act she is not manipulated to do by the concerted acts by the defendants in 265, Bill G. Kuhns, Esquire, while he is a

paid employee of FDIC at times before 02/01/88 and, now, herein by TRACY. All, in continuity with the November 1988 assumption of duties of confidence by Doyle Blythe, Esquire who is too materially associated with TRACY for it to be believable that at least a civil conspiracy exists wherein ***TRACY*** has assumed liability for culpable acts by the Bank of Newcastle, in breach of confidences by both Blythe and ***Kuhns***, Esquires in culpable ***collusion*** in these matters.

66. The assets of Continental Fitness entities and Mike's Health Center, Inc. were not ROBERTS to bargain with and, on information and belief, any purported waiver or conveyances by her of any interest of any entity or interest in any entity she represented in any representative capacity referred to in

these matters was a result of her involuntary servitude, caused by the conditions of duress and coercion exerted by her by the 265 defendants culpable negligence and/or intentional acts, and any such purported waiver or conveyance would, therefore, be void ab initio.

67. Assertions by affiant toward ROBERTS are in rem only to clear title and to achieve complete adjudications based on these informations and beliefs. She continues to have the protection against in personam liability in Chapter 7 bankruptcy. Wherein, on information and belief she has not authorized acts of collusion and misrepresentation to be made in her name by the trustee in bankruptcy, nor Bill G. ***Kuhns***, Esquire. The abandonments by the trustee in her bankruptcy shown in these records are effective in favor of affiants positions

asserted herein and in 265.

68. On information and belief, were it not for the circumstance still so convincing ROBERTS she has "no choice" and "no reasonable alternative" except to submit herself and her will in all her referenced capacities referred to herein; ROBERTS would have quit claimed her interests in 265 to BASHAM months ago. After communications following the revelations that Bill G. ***Kuhns***, Esquire was ***covert***ly, at least unknown to Basham, ***taking pay from FDIC while arguing against his Continental Fitness clients in 265 02/01/88***.

69. These death threats were reinforced by the fact that repeated death threats.

70. Positions assumed by TRACY herein assume liability owed to Basham for loss of that valuable good will and

continuing inability of ROBERTS to do acts outside her continuing "involuntary servitude" in matters at bar herein, by reason her being persuaded, whether or not some one with stronger will or with a different view of the facts would not have been so persuaded she "had no other choice" except than to so submit herself to the manipulations of the 265 defendants and their confederates, now negligently or intentionally joined and assumed by TRACY.

71. TRACY represented to the court in C-85-201 a receiver should be appointed to take possession of assets of a corporation named "Continental Fitness Center, Inc." and based on that representations the C-85-201 court entered its order therein 09/02/88:

ORDER APPOINTING RECEIVER

...IT IS THEREFORE ORDERED,

ADJUDGED AND DECREED BY THE COURT that Tom Hunter, an individual in McClain County, State of Oklahoma is hereby appointed as receiver of Continental Fitness Center, Inc., or associated corporations, and is hereby ordered to immediately take into his possession and under his control any and all property located at and in McClain County, State of Oklahoma, to-wit:

> Lots 26 and 27 Block 111, City of Purcell, McClain County, according to the Plat thereof, also known as 231 W. Main Street, Purcell, Oklahoma.

The above receiver is to take into possession and under his control all of the property and assets income of said business within the State of Oklahoma, and to collect, hold,

preserve, and manage said assets and to protect the same under orders of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED BY THIS COURT that said receiver, before entering upon the discharge of his duties, execute in that the Court, based upon the evidence, testimony, and request of the parties, waives any and all bond, as provided by law.

Done in open court this 2nd day of September N.E.(interlineated over an illegible date in August 1988)

s/ Noah Ewing
Judge of the District Court

Had TRACY done his duty that the statement of "Continental Fitness Center, Inc." shows he did not do, for telling the truth of facts for attorneys representations to the court that carry

the force and responsibility of sworn statements when made by an attorney, as officer of the court, and his duty to tell the truth for purposes of both fact and law required by 12 O.S. § 2011; even to make a cursory review of the UCC records, record land titles, the C-84-3 record, the C-84-373 record and the CIV 87 0265-P record, and records of the Secretary of State of the State of Oklahoma he would have known at once that none of those cases nor records have a entity named "Continental Fitness Center, Inc." of any material position or "association" in any case referred to herein. (emphasis added)

APPENDIX G

Petitioners opening appeal brief below, and as referred to in his "Appellant's Reply Brief" filed June 27, 1991, pages 6-17 are quoted below in this ***Appendix G***:

IV. ISSUES ON APPEAL.

"Errors" ("***ER***") 1 through 127 were preserved in Appellant's briefs and are preserved herein. Except only as follows herein. ***ER*** 48 is dropped in view of Will v. Mich. Dept. Police, 109 S.Ct. 2304 (***June 9, 1989***). Id. J. Stevens dissent shows De's ***ER*** 48 was in good faith.

Appellees did not argue against the form of presentation and argument on of each of De's assigned error. De's petition in error is clear that the page numbers referred to in the referenced errors are to the De's 12/30/88 filings.

That and appeal briefs made ample argument in support of *each* of De's cited errors. Appellees have, thus, waived any ability to do so now.[1]

Results required on this appeal are that the following errors *"ER"* be answered *"Yes"* on rehearing and remand for Appellant: *ER* 1,[2] 2,[3] 3,[4] 4,[5] 5, 7, 8, 9, 11 thru 20,[6] 21,[7] 22, 23, 24, 25,[8]

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1 "Ark.Lou. Gas v. Gable & Ellis v. Ark Loui.(*APRB* p.1)

2 *ER 1* Did the trial court err in deciding plaintiffs did not ***waive*** rights to deny DeWayne W. Basham ("Basham") standing by joining him as a defendant?

3 *ER 2* Did the trial court err in deciding Basham is not favored with plaintiffs being ***estopped*** to object to his standing by joining him as a defendant?

4 *ER 3* Is the ***collateral attack*** on the decision 01/03/84 02/06/84 in C-84-3...in C-85-199 and C-85-201... to reach opposite conclusions C-84-3's decisions favorable to Basham, barred by the 3 **year limitation of 12 O.S. 1031 (Third)**?

5 *ER 4* Is the ***collateral attack*** on the decision of Case No. C-82-1049 IN THE DISTRICT COURT OF CLEVELAND COUNTY entered with order for immediate execution *08/09/82*, having execution issue *08/17/87*, parties in C-85-199 and C-85-201 seeking to reach opposite conclusions to that decision, id., 1/3rd interest assigned in written agreement to Basham, barred by the **3 year limitation of 12 O.S. 1031 (Third)**?

6 *ER 20* Did the trial court err denying Bashams motion for court appointed counsel under state law (page ["p"] 4), on federal law violate Basham's right to effective assistance of competent counsel (p. 4) : United States v. King, 664 F.2d 1171 (D.C. Colo., 10th Cir. 1981), **United States v. Golub**, 638 F.2d 185, 187 (10th Cir. 1980)?

26,[9] 27,[10] 28, 29,[11] 30, 31, 32,[12] 33,

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[7] *ER 21* Did the trial court err denying Bashams motion for court appointed counsel under peculiar circumstances the $240,000.00+ litigation fund corresponding to the exclusive and limited power of attorney in ¶36 02/07/84, DeBOER CONST., INC. v. RELIANCE INS. CO., 540 F.2d 486 (W.D.Okla., 10th Cir. 1976)(construing ***Oklahoma law of limited powers of attorney***) after breach of 02/07/84 agreement provisions by plaintiffs in C-85-201 in 1985?

[8] *ER 25* Did the trial court err deciding the **interests in possession of real estate delivered to Basham 10/15/82 under express terms of the 10/15/82 and 02/03/83 agreement (litigated deciding Basham performed 02/03/83 in C-84-3's decisions in 1984) was taken by ...in C-85-201 by adverse possession** in ***less than the 15 year time of*** 60 O.S. § 333?

[9] *ER 26* Did the trial court err deciding Basham lacked standing to retrieve his $78,000+ interests in Case No. C-82-1049 IN THE DISTRICT COURT OF CLEVELAND COUNTY pledges as a ***surety*** under 10/15/82 terms?

[10] *ER 27* Did the trial court err deciding Basham does not have a right to retain the real property under delivered to his interests in possession 10/15/82, as distinguished from liens on property that do not enjoy interests in Oklahoma property, under the 02/03/83 agreements terms and to elect to ***terminate***, rather than rescind, in view of others breaches of 02/03/83 and/or 02/07/84 terms under KING v. OAKLEY, 434 P.2d 868 (Okla. 1967)?

[11] *ER 29* Did the trial court err refusing to allow Basham standing as an aggrieved party over Bashams assertions he is actionably aggrieved according to Oklahoma law: CLEARY v. HARRISON, 621 P.2d 528 (Okla. 1980)?

[12] *ER 32* Did the trial court err denying Basham a right to jury trial, pro se, advocating both his **direct and derivative rights at stake in this record**, offending the change in American jurisprudence that changed from disallowing to requiring, to satisfy the 7th Amendment to the U.S. Constitution, beneficiaries and shareholders to try issues at law to juries even in shareholder derivative actions where that had not been allowed before: ***Ross, et al, Trustees v. Bernhard et al***, 396 U.S. 531 (2nd Cir. 403 F.2d 909, reversed, 1970) cited in Thompson v. Kerr-McGee Refining Corp., 660 F.2d 1380 (10th Cir. 1981, Cert. Den. 102 S.Ct. 171)?

34, 35, 36,[13] 37 thru 44, 45,[14] 46, 47,[15] 50,[16] 51,[17] 52, 53, 54, 55,[18] 56,[19] 57,

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13 ***ER 36*** Did the trial court err rejecting Bashams assertions that C-85-199 and C-85-201 are without requisite subject matter jurisdiction, without judicial function, and without discretionary function, to unilaterally restructure (pp. 9 and 10) agreements done relying on decisions and matters decided in C-84-3 and C-84-373, ASHELMAN v. POPE, 793 F.2d 1072 (9th Cir. 1986), McMillian v. Svetanoff, 793 F.2d 149 (7th Cir. 1986), VAN SICKLE v. HOLLOWAY, 791 F.2d 1431 (10th Cir. 1986)?

14 ***ER 45*** Did the trial court err sustaining Jack Tracy, Esquire's claims he has the only actionable rights to "Continental Fitness Center," without joining the Continental Fitness Limited Partnership, an Oklahoma limited partnership (p. 18), ***DYCUS*** v. BELCO INDUSTRIES INC., 569 P.2d 553 (OKL.APP.2 1977)(analysis of Oklahoma precedents and statutes in context to unlawful "***15 O.S. § 211***"... favor the limited partners owed by all who assume ... duties)?

15 ***ER 47*** Did the trial court err deciding that Basham does not have standing in context to the Kuhns, Esquire 02/24/88 disclosures, for damage action (p. 20) pursuant to FDIC v. CATHERINE DEMPSTER, et al. , 637 F.Supp. 362, (E.D.Tenn, S.D. 1986) FDIC v. CATHERINE DEMPSTER, et al., 637 F.Supp. 362, (E.D.Tenn, S.D. 1986)

The United States properly conceded that under 28 U.S.C.A. § 2675(a) a tort claim cognizable under Federal Tort Claims Act could have been asserted by counterclaims by the Lindleys and the Trustees without their first presenting the claim to the appropriate federal agency

with right to try these federal issues?

16 ***ER 50*** Did the trial court err by refusing to conform the variances in plaintiffs pleadings to the control of the exhibits attached to and referred to in plaintiffs C-85-201 pleadings (p. 23) the WILLIAMS v. PHILLIPS PETROLEUM, 406 P.2d 474 (Okla. 1965)?

17 ***ER 51*** Did the trial court err by refusing to conform the pleadings to the proof of the record below, over Bashams assertions (p. 24) on GRAGG v. JAMES, 452 P.2d 579 (Okla. 1969)?

18 ***ER 55*** Did the trial court err refusing to decide that the commencement of C-85-201 before the extended 30 day grace period of ¶49 02/07/84 (p. 27) rendered all claims by and under Bank of

58, 59,[20] 60 thru 73, 74,[21] 75, 76,[22] 77, 78, 79, 80,[23] 81,[24] 82, 83, 84,[25] 85,[26] 86,[27] 87, 88, 89, 90, 91, 92, 93, 94, 95,

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Newcastle in C-85-201 pursuant to lien claims without standing to invoke jurisdiction?

[19] *ER 56* Did the trial court err refusing Basham a right to sue for damages based on C-85-201 plaintiffs bad faith (p. 29)?

[20] *ER 59* Did the trial court err in violation of Bashams rights protected (p. 33) by U.S.C.A.Const.Amend. 14? Ward v. Love Co., 253 U.S. 17 (1920).

[21] *ER 74* Whether the trial court erred granting Jack Tracy, Esquire authority to claim both under the 02/07/84 agreement and ***against*** its exclusive limited power of attorney provisions of ¶36, (p. 45) DeBOER CONST., INC. v. RELIANCE INS. CO., 540 F.2d 486 (W.D.Okla., 10th Cir. 1976)?

[22] *ER 76* Whether the trial court erred refusing to make findings of fact that each act done against C-84-3's decisions (p. 47) ***constitutes obstruction of justice***?

[23] *ER 80* Whether the trial court erred in not deciding that Basham has rights of action that first ***accrued 02/24/88 upon the undisputed facts of disclosures by Bill G. Kuhns, Esquire that had been materially covered-up*** from Basham despite ***duties to inform Basham*** (p. 53), ***WILLIAM v. BORDEN,*** INC., 637 F.2d 731 (C.A.OKLA. 1981)?

[24] *ER 81* Whether the trial court erred denying Basham standing without complete adjudication of all issues in controversy, P.E.A.C.E. v. OKL. NATURAL GAS CO., 568 P.2d 1273 (Okla. 1977)?

[25] *ER 84* Whether the trial court erred denying Bashams cross claims (p. 58) as to parties attorneys pursuant to 46 O.S. §§ 14, 15, and 16?

[26] *ER 85* Whether the trial court erred denying Bashams demand for jury trial on dispute of size of promissory note obligations contrary to state law: GRACE et al v. HILDEBRANT et al, 237 P.2d 98 ... THOMPSON v. KERR-MC GEE RF. CORP., 660 F.2d 1380 (10th Cir.1981, Cert.Den. 102 *S.Ct.* 171)?

[27] *ER 86* Whether the trial court erred denying Bashams demand for jury trial on dispute of size of promissory note obligations contrary to federal law: GRACE et al v. HILDEBRANT et al, 237 P.2d

96, 97, 98, 99, 100,[28] 101 thru 117, 118,[29] 119,[30] 120, 121,[31] 122 thru 127.

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98 (Okla. 1925) ... THOMPSON V. KERR-MC GEE REFINING CORP., 660 F.2d 1380 (10th Cir. 1981, Cert. Den. 102 S.Ct. 171)?

28 ***ER 100*** Did the trial court err overruling Bashams counter-motions for summary judgment? (12/30/88 p. 66-76)

...consolidating ***C-84-3 C-84-373 C-85-199 C-85-201***...

...barring them taking any thing from DeWayne Basham...

...deciding all claims by and under Bank of Newcastle, Jack Tracy and Cheryl Tracy be decided void, unenforceable, based on the 07/29/82 unlawful or illegal "loan," relations to Basham...

...deciding all opposing rights and liabilities stated in the 02/07/84 agreement and C-84-373, providing a reasonable time, after the proceeds...much over $333,000...and finding that Basham is a named intended party third party in interest in that 02/07/84 matter with standing to enforce it ... ***15 O.S. § 29***...

...***Repleven claims*** in favor of Basham on all personal properly described in this action ...

...express trust arising 02/07/84, issuing discover to be conducted by a receiver appointee in C-84-373 where competent jurisdiction does exist to exercise receivership over those entities, placing that over $333,333.00 fund .... for the first time achieve a complete adjudication of the opposing rights and liabilities of the parties in these matters.

...***Breach of General Warranty Covenants***...

...***Future damage to property rights***...

...***Mortgage release damages***...

...***Civil conspiracy claims***...

...enter judgment ***UCC release claims***, to recover on ***12 O.S.§ 9-404 damages***, in favor of Basham, and or damages, costs and fees, on authority...

...***Tortious interference claims***, as to Jack Tracy, Esquire, as distinguished from his successors in interest, in favor of Basham, and or damages, costs and fees, on authority...

29 ***ER 118*** Whether the trial court erred by refusing to sua sponte inquire into contract **illegality of the July 29, 1982** transaction,

The decisions on *ER 6*[32] and *ER 10*[33] should be *"No.*

V. FACTS.

The undisputed facts are the 07/29/82 sham loan forms the basis of

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and whether that ***must*** be inquired into ***sua sponte*** on appeal, whether or not raised by the parties or trial court, pursuant to **federal law:** Second Russian In. Co. v., Miller, 268 U.S. 552 (1925); and Sampsell v. Imperial Paper & Color Corporation, 313 U.S. 215, 61 S.Ct. 904 (1941),"654"**at 200**)(See: *ER 117.*)

[30] *ER 119* Whether the trial court erred by refusing to decide that plaintiffs assertions in C-85-201 **offends national public policy, therefore violates federal law, against unilateral restructure of commercial transactions** and requires reversal and remand to adjudicate the **express transactions to their expressed objectives** for conclusions by effect of law: ALLIED BANK INTERNATIONAL et al v Bankco Credit Agricola De Cartango, Bankco Naconal De Costa Rica, 757 F.2d 516 (S.D.N.Y., 2nd Cir. 1985)?

[31] *ER 121* Whether the February 1, 1989 Order violates Oklahoma's **validation of commercial transactions suit doctrine:** GENERAL MOTORS v. Okla. City Bd.Equal., 678 P.2d 233 (Okla. 1983) in a way actionably prejudicial to Basham?

[32] *ER 6* Did Bank of Newcastle have ***standing*** to invoke equity under the *07/29/82* ***"loan"*** for foreclose its equitable lien claim thereunder?

[33] *ER 10* Does the disbursement by Bank of Newcastle 07/29/82 loan proceeds to "pay off" or pay on loans owing to that bank by Tri-City Health Center, Inc., Michael Feroli Deborah Feroli, shareholders, officer and director of the corporate "borrower" Mike's Health Center, Inc. ("MHC"), rather than to legitimate business purposes of that "loan" that its "refinancings" and exertions refusing to discharge it resulting in the 02/07/84 "agreement" ***to try*** *whether* the bank would pay out the funds described in ***¶15*** 02/07/84 in addition to or inclusive of the purported "07/29/82 loan" and its "refinancings"... under the sale of those promissory notes **with full recourse and general warranty?**

suit and duties assumed by all C-85-201 Plaintiffs and Tracys who admit (12/30/88 p. 68)[34] they sued Appellant on that basis (12/30/88 p.68) and on the 02/07/84 (*ExB*) express terms that say on their face (in its attached, referenced and initialed exhibits). De has standing to recover and defend on its ¶15 02/07/84 *general warranty*, and its other express terms. By virtue of the fact it names De as a intended third party in interest *consents* to and *ratifies* C-84-3's 02/06/84 *decision* founded on De's

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34 *5. Tracy asserts Two security agreements granting an interest in certain personal property and reading as follows:

> Then describe the 03-29-83 and 12-9-80 promissory notes that are shown in 02/07/84 "control" agreement to have been sold to Continental Fitness Center PR, Inc. and Continental Fitness Center PV, Inc.
>
> *"This is controlled by the agreement to which it is attached as "EXHIBIT D."* (is how the document attached to Tracy's statements reads: as distinguished from his statement that is "Ex B")

The key words *"controlled by"* ...take any reader of that "security agreement" to have knowledge of the fact there can be no lien or security interest arise in favor of anyone until the C-84-373 case designated in ¶36 02/07/84 is finally adjudicated.

02/03/83 completed ***Buyer's*** performance purchasing ***interests in stock*** for ***surety pledge*** and other considerations 02/03/83 ***due Sellers*** delivery ***03/01/83*** on its express terms.

Tracys also admit they assumed all duties arising from 02/07/84 express terms as their basis herein. They did not argue against De's assertions (p.9,15)(***APBRH*** p.15) Tracy's assumed BANK's positions knowing their ***07/29/82*** sham loan is unlawful under 15 O.S. §211. Therefore, the corresponding ***general warranty*** (***ExB¶15***) obligations are owing to De as a 02/07/84 named 3rd party in interest are over $300,000.00 more than offsets, if any, to or under the ***BANK***.

VI. GRAVAMEN.

De's error issues for appeal herein are all genuine. Any one of these alone

require rehearing and being sustained for De herein. Moreover, the conspicuous refusal by state and federal officials to put a human neck on the line to swear to affidavit facts sufficient to make the ***affirmative defense*** required by the Harlow v. Fitzgerald, 457 U.S. 800 (1982)[35] Court do alert you De's claims are good. (***APRB p. 28***)(***654*** @ p.7) Id. You do not want to do as Jack Tracy insists you do to go outside judicial capacities to join the precise kind of "***bribery***" culpability Judge Walter L. Nixon did resulting in his incarceration and impeachment (***JDN***) (***APB*** p.26 ¶37) The 10th Cir. was up front in ***HOLLOWAY*** (f.1) to say they would have assumed liability had they usurped the final and unappealed Colorado state court decision, the way Tracy says you should do to usurp the C-

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[35] CLEAVINGER v. SAXNER, 106 S.Ct. 496 (1985)

84-3 1984 and other ***full faith and credit*** decisions that support De's positions on appeal herein. The issue is not one of doing a judicial capacity act, it is of an act that you could only do outside your judicial capacity[36] against these facts, precedent, id., and ***Holloway***.

Before De's first business contact to others on matters at bar a transaction Oklahoma law deems "unlawful" under 15 O.S. § 211 pursuant to Pemberton v. Longmire, 194 Okl. 311, 151 P.2d 410 (1944) was already corrupting the corporate existence of Mike's Health Center, Inc. (***"MHC"***). Appellees neither attempt to refute fact nor law by which De asserts that all claims made by or under Bank of Newcastle are ***unlawful in se***, on Pemberton id. (p.9,15)(***APBRH*** p.4,23)

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36 ASHELMAN v. POPE, 793 F.2d 1072 (9th Cir. 1986)

Jack Tracy, an attorney, tells you that the issues in *265* and the case below and in this appeal are indistinguishable for res judicata views. ***Untrue***. Appellees do not deny De's ***unopposed*** Dist.Ct. Rule 13 ***Affidavit*** facts (12/30/88 p.34¶58,p.37-41[37])[38] below that say Bill Kuhns the continuing ***bribery scheme*** (12/30/88 Motions p.4)(***04/17/89*** [***"BRHF"***] p. 27). Kuhns representation is worse for his *265* clients (***and De's interests in those entities***) and *C-85-201* than disbarred the attorney in State of Oklahoma, ex. rel. v. Coy H. McKenzie, 46

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37 ¶68. On information and belief, were it not for the circumstance still so convincing ROBERTS she has "no choice" and "no reasonable alternative" except to submit herself and her will in all her referenced capacities referred to herein; ROBERTS would have quit claimed her interests in 265 to BASHAM months ago. After communications following the revelations that **Bill G. Kuhns, Esquire was covertly, at least unknown to Basham, taking pay from FDIC while arguing against his Continental Fitness clients in 265** *02/01/88*.

69. These ***death threats*** were reinforced by the fact that repeated death threats...

38 "...***concerted acts*** by the defendants in 265, ***Bill G. Kuhns, Esquire, while a paid employee of FDIC*** at times ***before 02/01/88 and, now, herein by Tracy.***

Okla. Bar Journal 3114 (1989).[39] The duty all C-85-201 attorneys had to not file C-85-201 and to conform to C-84-373 and by 02/07/84 constraints are so positive and proved on this record a finding is required herein by C-85-201 attorneys *who are responsible to the court and De* for their frauds on the court; to De's actionable detriment. In Re Tri-Cran, Inc., 98 B.R. 609[40] and

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[39] State of Oklahoma, ex. rel. v. Coy H. McKenzie, 46 Okla. Bar Journal 3114 (Okla. 1989)

> DR 1-102 (1) (A) (2) (A) (4)...engaging in conduct involving dishonest, fraud, deceit, misrepresentation;
> DR 5-101(A)(1) and (B). DR 5-105(A) & (B), DR 6-101
> DR 6-101(A) (3)... intentionally prejudicing...
> DR 7-102 (A)(3)... failing to disclose;
> (A)(5)... false statement of law or facts; (A)(8)

[40] In Re Tri-Cran, Inc., 98 B.R. 609

> ...based on ***newly discovered evidence*** or on ***fraud, misrepresentation or misconduct, shall be made not more than one year after the order was entered.*** The Trustee's complaint to set aside sale was filed more than one year after entry of the order approving the sale; therefore, Fallon concludes, the Trustee's complaint was filed late and must be dismissed.
>
> [3] ...***fraud on the court deminishes the integrity***

of the judicial machinery itself, "[t]he public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." ***Hazel-Altlas Glass Co. v. Hartford Empire Co.***, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250. To vindicate the integrity of the judicial process, a court may entertain a complaint for fraud on the court long after the judgment was entered. In *Hazel-Altlas*, for example, the Supreme Court upheld the power of a lower court to entertain an action for fraud on the court that was commenced ***over eight years after the original judgment was entered***. *Id.* at 239, 244-246. *See also Root Refining Co. v. Universal Oil Products Co.*, 169 F.2d 514, 521-522 (***3rd Cir. 1948***)(a judgment's freedom from fraud is a matter of "***vast public importance***" that "***may always be subject of further judicial inquiry***"; "***it becomes immaterial that the injured party may have been derelict in bringing the fault to the courts attention.***")

[5] As it has been applied, fraud on the court refers to a subcategory of fraud, misrepresentation or other misconduct in which the fraud misrepresentation, or other misconduct is committed by the court, its personnel, or its officers. In ***Bulloch v. United States***, 721 F.2d 713 (***10th Cir.*** 1983), fraud on the court was defined as

> fraud which is directed to the judicial machinery itself... fraud where the Court or a member is corrupted or influenced or influence is ***attempted*** or where the judge has not performed his judicial function-thus where the impartial functions of the Court have been directly corrupted...(emphasis added)

[6] Where a judgment is obtained by fraud perpetrated by an attorney acting as an officer of the court, the judgment may be attacked for fraud on the court. "***Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.***" *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976), citing *Kupferman*, supra, at 1078, and Restatement, Judgments, sec. 126 comment (c) (Supp. 1948).

(10th Cir. 1983).[41] Appellees do not deny all C-85-201 Plaintiffs had actual knowledge 02/07/84 express terms placed exclusive ***jurisdiction*** in ***C-84-373*** to the absolute exclusive intent there not be any attempt to usurp its jurisdiction on its exclusions ***rule***.[42] Record attorneys

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> ...***Fraud on the court thus always involves two victims***: the ***individual litigant against whom the judgment was obtained and the court itself***, whose integrity is compromised by the fraudulent behavior of its officers. "The very temple of justice [is] defiled." ***Universal Oil Products v. Root Refining Co.***, 328 U.S. 575, 580, 66 S.Ct. 1176, 1179, 90 L.Ed. 1447 (1946).(emph. added)

[41] Bulloch v. United States, 1 Fed. Rules Serv.3d 926 (10th Cir. 1985)'s dissent:

> This concealment is made even more egregious by the fact that government lawyers in civil cases have the responsibility to seek justice and to develop a full and fair record..." Model Code of Professional Responsibility, EC 7-14 (1980)...The Porter court goes on to make clear, however, that if Porter's attorneys had known of and sponsored such misdeeds as ***nondisclosure***, ***misrepresentation*** or ***perjury***, it would have been quite another matter: "Since attorneys are officers of the court, their conduct, if dishonest, would constitute **fraud on the court.**" (emphasis added).

[42] Woolley v. Shaw, 136 P.2d 398, 403 (Okla. 1943)

> [W]herever there is a likelihood of two courts of concurrent

better stipulate to that ***now***.

The answer required of you to ER 22[43] & 118 is "yes".

Unless reheard and reversed Jack Tracy's ***mens rea*** will have successfully duped you into assuming civilly and criminally culpable acts too far outside your judicial capacity, in light of this record, for you to have any chance of a ***affirmative defense*** required by the Harlow, supra, and ***Holloway*** Courts. Involving the undisputed ***"bribery"***,

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jurisdiction coming into conflict in their orders with respect to ***specific property***, ***the court first having jurisdiction of the specific property*** has **exclusive jurisdiction**...

As between two courts having concurrent jurisdiction of the subject matter, the court first acquiring jurisdiction will retain jurisdiction to the ***exclusion of the other***. (emphasis supplied)

[43] 22. Did the trial court err deciding Basham lacked standing to recover from FDIC in its corporate capacity for hiring Bill G. Kuhns, Esquire on salary, under the peculiar circumstances of this case where it is undisputed Kuhns, Esquire did not disclose that fact to Basham until ***02/24/88***, under scrutiny of conflicts of interest and Basham's actionable aggrievement: **WALKER v. UNITED STATES**, 663 F.Supp. 258 (E.D.Okla., March 19, 1987), LOMAS & NETTLETON FIN. CORP., 79 F.R.D. 658 (N.D.Texas, Dallas Division 1978), CORPORATE-CONFLICTS OF INTEREST, 8 THE JOURNAL OF CORPORATION LAW 4 (Summer 1983) at pages 577, 580.

"death threats", and *"covert"* characteristics no party below nor on appeal makes cognizable dispute do exist as De's undisputed facts assert now exist. De has reserved rights to civilly and criminally prosecute every body that wrongs him in these contexts. Perpetrators in Carpenter v. United States, 108 S.Ct. 316 (1987) lacked the ***mens rea*** of Kuhns and Walter L. Nixon. Carpenters culpable actors only were guilty of ***insider trading***. The bribery of at least Kuhns, Esq. and judicial process bribery corruption as in Walter L. Nixon, supra, is much worse. As *"fraud on the court"* authority says it is, infra. All claims by and under C-85-201 Plaintiffs are unlawful and required to be discharged from the continuing harm they are doing to De. In order for you to do your ***sua sponte duty***. (***APB***

p.14,p.30)

APPENDIX H

AMENDED OBJECTION TO JURISDICTION

OR

IN THE ALTERNATIVE
ANSWER TO AMENDED PLEADINGS IN "C-85-199 AND C-85-201"
AND COUNTERCLAIM
AND
MOTION TO CONSOLIDATE
CASES NO. "C-84-3" AND "C-84-373" IN MC CLAIN COUNTY
STATE OF OKLAHOMA
WITH C-85-201 AND C-85-202.

IN THE ALTERNATIVE
ANSWER AND COUNTERCLAIM
OBJECTION TO EXERCISE OF JURISDICTION
AND
MOTION TO CONSOLIDATE
CASES NO. "C-84-3" AND "C-84-373" IN MC CLAIN COUNTY
STATE OF OKLAHOMA
WITH C-85-201 AND C-85-202

ANSWER TO AMENDED PLEADING.

52. The clear terms of 02/07/84 ¶36 has C-84-373 arise under its control, constraining the "$112,463.16" note referred to in the THIRD CAUSE OF ACTION in C-85-201; depending on its actionable character, in the precise sense referred

to in Bras v. First Bank & Trust Co., 735 P.2d 329 (Okla. 1985) at 333:

> If any of the issues actually adjudicated in the instant case were essential to the prior judgment, then the Petitioner was properly estopped to challenge them collaterally.

The C-85-201 attack by and under Bank of Newcastle is a sheer transparent attempt to usurp the well known and noticed effect of the 02/07/84 "agreement" executed, pursuant to final appealable orders in C-84-3, being attempted to be usurped to circumvent and over reach the stipulations in that executed decision binding the parties to stay inside C-84-373 and to not commence such a deraigning action as C-85-201. In that context, and particularly, in the context of this claim being sold with so much notice on these public records, the sale of this claim under these circumstances is

absolutely indistinguishable from being champertous, even under the narrow way Oklahoma construes that doctrine in MITCHELL v. AMERADA HESS CORP., 638 P.2d 441 (Okla. 1982).

53. Additionally, assertions of that claim against Basham's position is based on each and all species of fraud and want for consideration that determine a "loan" void, rather than merely voidable, under scrutiny of Bras, supra, and LANGLEY v. FDIC, 108 S.Ct. 396 (1987). Id. Under circumstances, as underpin all relations of Bank of Newcastle and claimants under it as toward Basham in this case; are determined to be ***fraud in the factum*** that renders the "loan" void, ab initio, thus, the FDIC never did have any interest to protect. In this matter that is true from 07/09/82 before Basham entered these

matters in controversy here first on 10/15/82.

54. The "SIXTH CAUSE OF ACTION" in C-85-201's petition is the "PR" 02/07/84 promissory note that, as does the one referred to in the THIRD CAUSE OF ACTION, state on its face, it is "**controlled by**" the 02/07/84 agreement to which it is attached as an Exhibit as do the UCC's noticing that the ¶49 no lien provision is in effect until after a C-84-373 judgment lien arises, if ever, against PR and PV: there is simply no legitimate way any one could read that, in the way law requires, DeBOER CONST., INC. v. RELIANCE INS. CO., 540 F.2d 486 (W.D.Okla., 10th Cir. 1976), and not know the "limited power of attorney," id., effect is invoked by the exclusive ¶36 02/07/84 provision that stood Robert G. Boren, Esquire and his $500,000 or more errors

risk policy between the Continental Fitness entities and assures Basham as a named third party in interest, relying on his January 18, 1985 opinion, carries the intent and reliances of all concerned that a vicious attack as launched in C-85-201 would never arise and that the constraints of C-84-373 done in fully executed C-84-3 decisions in 1985 would be honored....

57. The very fact that C-84-3 is referred to in the 02/07/84 agreement negotiated by Brinkley and Gray shows the bank asserts it has a right to invoke equity on the basis of, if one reads it and thinks a little about it, they see at once, what Brinkley, Gray and the Bank of Newcastle did when they "haggled" 5 weeks (02/07/84 ¶60) was to admit they had tricked Lou Ann Blankenship into presenting a petition to invoke

visitation to Honorable Noah Ewing 01/03/84, then to go out and organize the Continental Fitness entities 01/04/84 as done, in reliance on finality of C-84-3's 01/03/84 decisions, then mail 1,000 Continental Fitness membership cards through the U.S.Mail, then, tried to twist her, as a visitor of the court, impeding administration of the intent of the C-84-3 court orders, obstructing justice, UNITED STATES v. McKNIGHT, 799 F.2d 443 (8th Cir. 1986), UNITED STATES v. CULY, JR., 790 F.2d 796 (9th Cir. 1986)

> [2] Cully's second argument is that the trial court erred in refusing to permit him to testify that he was ***confused over the scope of the court order the agents were trying to enforce.*** The trial judge was correct in excluding such testimony. Culy was charged with willfully interfering with the agents, not with willfully violating the court order. Culy knew the officer s were NLRB agents and knew they were acting pursuant to a court

order. The evil purpose and knowledge of wrong implicit in the requirement of willfulness, *see United States v. Armstrong*, 781 F.2d 700, 706 (9th Cir. 1986)(knowledge of wrong) (emphasis added)

Solomon LUSBY, Vaughn Lusby and Alvin Lusby, Plaintiffs-Appellees, v. T.G. & Y. Stores, Inc., an Oklahoma corporation; Charles Gent, Steve Wertz, and Kent Dunegan, Defendants-Appellants, (Nos. 82-1721, 82-1779, W.D.Okla., Lee R. West, J., 10th Cir. 1986) (106 S.Ct. 40, 88 L.Ed.2d 33, on remand 796 F.2d 1307, cert. denied 106 S.Ct. 65, 88 L.Ed.2d 53, rehearing denied 106 S.Ct. 548, 88 L.Ed.2d 476, certiorari denied 107 S.Ct. 275, 93 L.Ed.2d 251). The 02/07/84 agreement ¶60 admits the "haggling" went on almost daily for 5 weeks. This meant that Lou Ann Blankenship was forced to ....[See Appendix F to this Petition]

CROSS-CLAIMS

77. The foregoing statements,

except for the prayers, are incorporated by reference herein.

78. DeWayne Basham asserts the "trust funds" the IRS and the United States Government are asserting in 26 U.S.C.A. § 6672 claims are due to them from him are instead due to the government from the holder of the trust funds that arose in favor of them and Basham 02/07/84.

79. Basham asserts his right to have the money removed from possession of Bank of Newcastle by FDIC and/or its agents is due to be paid to extinguish these claims by the government against Basham.

80. Basham asserts FDIC and its attorney of record herein should be barred from discharge prior to final adjudications herein; in order to achieve a full adjudication herein that requires,

at least, they respond to 42 O.S. §§ 14, 15, and 16 statutory damages, in personam in favor of Basham.

COUNTERCLAIMS AND MOTION TO CONSOLIDATE CASES NO. C-84-3, C-84-373, C-85-199, C-85-201 AND C-85-202

JURY TRIAL DEMAND

82. Basham disputes the amount due under the notes in question in C-85-201, asserting the amount due under the note, the 07/09/82 "loan" was so corrupted it is vitiated, "void" rather than merely voidable, and all claims by or under Bank of Newcastle based thereon, and/or by TRACY asserting against Basham or and Basham's foregoing UCC, land title and adjudicated interests; each constitute a distinct basis requiring jury trial on issues to recover possession of real in ejectment, personal property in replevin and to try the size of the notes, whether zero as Basham asserts or having an

actionable dollar size as TRACY asserts, issues making trial by jury by right, on state law: GRACE et al v. HILDEBRANT et al, 237 P.2d 98 (Okla. 1925), LOCAL FEDERAL SAVINGS AND LOAN ASSOCIATION v. BURKHALTER, 735 P.2d 1202 (Okla. 1987); and federal law: Palermo, THOMPSON V. KERR-MC GEE REFINING CORP., 660 F.2d 1380 (10th Cir. 1981, Cert. Den. 102 S.Ct. 171).

83. The rights and liabilities of the parties are based on threshold examinations of the 07/09/82 "loan" transaction and the adjudicated interests arising from the adjudication holding Basham performed 02/03/83 decided in C-84-3. The results of C-85-199 and consolidated C-85-201 depend for their outcome on those former matters constrained by execution of C-84-3 decisions and stipulations in and to C-

84-373. For those reasons, the court is respectfully moved to consolidate those cases and adjudicate all opposing rights. After the jurisdictional time of 12 O.S. § 990, 1031.1 passes, following decisions final by ordering immediate execution, Mann v. State Farm Mut. Auto. Ins. Co., 669 P.2d 768 (Okla. 1987); in the same district, on the same facts, noticed in lis pendens and 16 O.S. § 74 notices as these matters are; decisions in subsequent suits on the same facts and subject matters as already decided 01/03/84 and 02/07/84 in C-84-3 and 10/09/84 in C-84-373 control over any subsequent decision in the district that are ineffective, as void aspects of nunc pro tunc orders, ineffective to alter the actual effect or appealable judgements after the 30 day time elapsed, id., DICKASON v. DICKASON, JR., 607 P.2d 674

(Okla. 1980). A consolidation of these case can put them all at issue at once and work an economy of disposition for both the parties and the court. To the ends advocated by the PENNZOIL, infra, court.

84. A substantial justice would be served in this procedure, to obtain the C-84-3 res, the over $333,333.00 long ago, now much larger with a variable interest rate about 14%. To serve the just objectives intended when the initial C-84-3 decisions ordered immediate execution, to serve the objectives 02/03/83 and, knowingly, serve in 1984 1,000 fitness center members, who, by May 1985 numbered approximately 5,000.

90. Whether C-84-373 is consolidated with C-85-201 or not, the statements in the 01/04/85 and 04/08/85 motions therein are adopted by reference herein, and

conformed in every variance therein and advocated herein, to those positions advocated by Basham herein. A natural outcome, based thereon is that the 07/09/82 "loan" will be decided "void," that the exertions for adverse claims by and under Bank of Newcastle adverse to Basham in all his referenced capacities is without requisite standing to make such adverse assertions and to find in favor on each for positions devolving by disclaimers, though execution, in favor of Basham herein. Together with the disbursements due from the 02/07/84 trust fund, as construed in INTERNATIONAL PAPER, supra. Wherein, Basham's rights are shown to exist actionable pursuant to 15 O.S. § 29, to exercise causing disbursements of that fund to Basham and juristic entities a material part of the benefit he bargained for in these

transactions were to establish and fund as viable juristic entities in their own right, to serve his objective purposes of providing supports and reliability thereon.

91. Ejectment claims are made in favor of Basham, upon all real property described herein, as to all parties joined in this action, on law of ejectment cited in At 16, and applicable foregoing for damages, on authority, infra.

92. Replevin claims are made in favor of Basham on all personal property described in this action, on law of replevin, damages, costs and fees cited on authority, infra.

93. Breach of General Warranty Covenants claim is made on the express general warranty 02/07/84 ¶15, in favor of Basham, damages, costs, on authority,

infra.

94. Future damage to property rights, including good will, in favor of Basham, and or damages, costs and fees, on authority, infra.

95. Mortgage release damages, pursuant to provisions that any party and attorney authorized to act in C-85-201 has a duty to pay the statutory penalty for failure to release defective mortgages or mortgages that are paid, 46 O.S. §§14, 15, 16, in favor of Basham, and or damages, costs and fee, in personam from all parties and their attorneys of record required to pay statutory damages for assertion of paid or extinguished or false mortgage claims due to have been released in response to demands by Basham in or before February 1987.

96. Civil conspiracy claims, to

recover for damages sustained by interrelated exertions under the unlawful or illegal 07/09/82 "loan" against Bashams interest, in favor of Basham, and or damages, costs and fees, on authority, infra.

97. UCC release claims, to recover on 12 O.S. § 9-404 damages, in favor of Basham, and or damages, costs and fees, on authority, infra.

98. Tortious interference claims, as to Jack TRACY, Esquire, as distinguished from his successors in interest, in favor of Basham, and or damages, costs and fees, on authority, infra.

99. State trover and conversion claims, ITT INDUSTRIAL CREDIT COMPANY v. L-P GAS EQUIPMENT, INC., 653 F. Supp. 671 (W.D.Okla. 1978), Davidson v. First Bank and Trust Co. v. Yale, 609 P.2d 1259

(Okla. 1977), in favor of Basham, and or damages, costs and fees, on authority, infra.

100. Federal conversion and/or embezzlement claims, if indeed Jack F. TRACY, Esquire, is successor to FDIC, he has a duty to preserve the confidential nature of the information, particularly the highly confidential customer information, that the 02/03/83 C-84-3 adjudicated conclusions show Basham was sold and vested with a current interest in the personal property assets of Mike's Health Center, Inc., in addition to having an interest in the option of the corporate stock therein decided he performed on the purchasers side of the option; on information and belief Jack F. TRACY, Esquire is either converting or embezzling that confidential information, for which Basham claims a right to jury

trial to establish fact and size of liability, pursuant to DAVID CARPENTER, KENNETH P. FELLIS AND R. FOSTER WINANS v. UNITED STATES, 108 S.Ct. 316 (Nov. 16, 1987), p. 320. (See: Footnote thereto)

101. The foregoing claims are made on the written transactions and official records referred to above herein being incorporated by reference into being in support of each claim made in personam as to each an all parties that become joined herein.

102. By all business standards Continental Fitness Center operation were a success. A most material consideration here is: Mike's Health Center, Inc. has never been turned loose from what can appropriately be referred to as the teeth of the shark. The bite has not loosened its bad faith grip on that corporation, or its trap laid in Bashams path

10/15/82, sprung in part 01/25/84 and another material part 05/16/85; still, exertions persist under that clearly void, unlawful or illegal 07/09/82 "loan." A classic loan shark operation is to cripple the victim, and, thereafter never let them out of the grip, viz. the "loan shark" PEREZ v. UNITED STATES, 402 U.S. 146 (1971)

> ...The essence of all these reports and hearings was summarized and embodied in formal congressional findings. They supplied Congress with the knowledge that the loan shark racket provides organized crime with its second most lucrative source of revenue....
>
> Extortionate credit transactions, though purely intra-state, may in the judgment of Congress affect interstate commerce. (emphasis added)

COUNTER-MOTION FOR SUMMARY JUDGMENT AND MOTIONS FOR SUMMARY JUDGMENT

103. The foregoing statements are incorporated by reference herein, together with the affidavit in support

hereof.

104. On December 20, 1988 "MOTION FOR SUMMARY JUDGMENT BY JACK TRACY AGAINST ALL PARTIES IN CASES C-85-199, C-85-201, AND C-85-202 was entered in therein in a single motion; to which this is a counter motion.

105. District Court Rule 13 is applicable.

106. Federal rules of decision and parties first joined having possession of trust funds over $333,000.00 in size are circumstances in the 02/07/84 "agreement" TRACY has admitted in sworn statements on this record control the basis of his standing, and whether or not he can assert any claim herein.

107. "FACTS AND ALLEGATIONS" asserted in TRACY'S MOTION FOR SUMMARY JUDGMENT are addressed by the paragraphs as follows: ...

APPENDIX I

Jack Tracy, an attorney, tells you that the issues in *265* and the case below and in this appeal are indistinguishable for res judicata views. ***Untrue***. Appellees do not deny De's ***unopposed*** Dist.Ct. Rule 13 ***Affidavit*** facts (12/30/88 p.34¶58,p.37-41[44])[45] below that say Bill Kuhns the continuing ***bribery scheme*** (12/30/88 Motions p.4)(***04/17/89*** ["***BRHF***"] p. 27). Kuhns representation is worse for his *265* clients (***and De's interests in those entities***) and *C-85-201* than

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[44] ¶68. On information and belief, were it not for the circumstance still so convincing ROBERTS she has "no choice" and "no reasonable alternative" except to submit herself and her will in all her referenced capacities referred to herein; ROBERTS would have quit claimed her interests in 265 to BASHAM months ago. After communications following the revelations that **Bill G. Kuhns, Esquire was covertly, at least unknown to Basham, taking pay from FDIC while arguing against his Continental Fitness clients in 265 *02/01/88***.

69. These ***death threats*** were reinforced by the fact that repeated death threats...

[45] "...***concerted acts*** by the defendants in 265, ***Bill G. Kuhns, Esquire, while a paid employee of FDIC*** at times ***before 02/01/88 and, now, herein by Tracy.***

disbarred the attorney in State of Oklahoma, ex. rel. v. Coy H. McKenzie, 46 Okla. Bar Journal 3114 (1989).[46] The duty all C-85-201 attorneys had to not file C-85-201 and to conform to C-84-373 and by 02/07/84 constraints are so positive and proved on this record a finding is required herein by C-85-201 attorneys *who are responsible to the court and De* for their frauds on the court; to De's actionable detriment. In Re Tri-Cran, Inc., 98 B.R. 609[47] and

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[46] State of Oklahoma, ex. rel. v. Coy H. McKenzie, 46 Okla. Bar Journal 3114 (Okla. 1989)

DR 1-102 (1) (A) (2) (A) (4)...engaging in conduct involving dishonest, fraud, deceit, misrepresentation;
DR 5-101(A)(1) and (B). DR 5-105(A) & (B), DR 6-101
DR 6-101(A) (3)... intentionally prejudicing...
DR 7-102 (A)(3)... failing to disclose;
(A)(5)... false statement of law or facts; (A)(8)

[47] In Re Tri-Cran, Inc., 98 B.R. 609

...based on ***newly discovered evidence*** or on ***fraud, misrepresentation or misconduct, shall be made not more than one year after the order was entered.*** The Trustee's complaint to set aside sale was filed more than one year

after entry of the order approving the sale; therefore, Fallon concludes, the Trustee's complaint was filed late and must be dismissed.

[3] ***...fraud on the court deminishes the integrity of the judicial machinery itself,*** "[t]he public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." ***Hazel-Altlas Glass Co. v. Hartford Empire Co.***, 322 U.S. 238, 246, 64 S.Ct. 997, 1001, 88 L.Ed. 1250. To vindicate the integrity of the judicial process, a court may entertain a complaint for fraud on the court long after the judgment was entered. In *Hazel-Altlas*, for example, the Supreme Court upheld the power of a lower court to entertain an action for fraud on the court that was commenced ***over eight years after the original judgment was entered***. *Id.* at 239, 244-246. *See also Root Refining Co. v. Universal Oil Products Co.*, 169 F.2d 514, 521-522 (***3rd Cir. 1948***)(a judgment's freedom from fraud is a matter of "***vast public importance***" that "***may always be subject of further judicial inquiry***"; "***it becomes immaterial that the injured party may have been derelict in bringing the fault to the courts attention.***")

[5] As it has been applied, fraud on the court refers to a subcategory of fraud, misrepresentation or other misconduct in which the fraud misrepresentation, or other misconduct is committed by the court, its personnel, or its officers. In ***Bulloch v. United States***, 721 F.2d 713 (***10th Cir.*** 1983), fraud on the court was defined as

> fraud which is directed to the judicial machinery itself... fraud where the Court or a member is corrupted or influenced or influence is ***attempted*** or where the judge has not performed his judicial function-thus where the impartial functions of the Court have been directly corrupted...(emphasis added)

[6] Where a judgment is obtained by fraud perpetrated by an attorney acting as an officer of the court, the judgment may be attacked for fraud on the court. "***Since attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court.***" *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115,

Bulloch v. United States, 721 F.2d 713 (10th Cir. 1983).[48] Appellees do not deny all C-85-201 Plaintiffs had actual knowledge 02/07/84 express terms placed exclusive ***jurisdiction*** in ***C-84-373*** to the absolute exclusive intent there not be any attempt to usurp its jurisdiction on

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1119 (6th Cir. 1976), citing *Kupferman*, supra, at 1078, and Restatement, Judgments, sec. 126 comment (c) (Supp. 1948). ...***Fraud on the court thus always involves two victims***: the ***individual litigant against whom the judgment was obtained and the court itself***, whose integrity is compromised by the fraudulent behavior of its officers. "The very temple of justice [is] defiled." ***Universal Oil Products v. Root Refining Co.***, 328 U.S. 575, 580, 66 S.Ct. 1176, 1179, 90 L.Ed. 1447 (1946).(emph. added)

[48] Bulloch v. United States, 1 Fed. Rules Serv.3d 926 (10th Cir. 1985)'s dissent:

> This concealment is made even more egregious by the fact that government lawyers in civil cases have the responsibility to seek justice and to develop a full and fair record..." Model Code of Professional Responsibility, EC 7-14 (1980)...The Porter court goes on to make clear, however, that if Porter's attorneys had known of and sponsored such misdeeds as ***nondisclosure, misrepresentation*** or ***perjury***, it would have been quite another matter: "Since attorneys are officers of the court, their conduct, if dishonest, would constitute **fraud on the court."** (emphasis added),

its exclusions *rule*.[49] Record attorneys better stipulate to that *now*.

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[49] Woolley v. Shaw, 136 P.2d 398, 403 (Okla. 1943)

> [W]herever there is a likelihood of two courts of concurrent jurisdiction coming into conflict in their orders with respect to *specific property*, *the court first having jurisdiction of the specific property* has **exclusive jurisdiction**...
>
> As between two courts having concurrent jurisdiction of the subject matter, the court first acquiring jurisdiction will retain jurisdiction to the ***exclusion of the other***. (emphasis supplied)

APPENDIX J

GENERAL MOTORS v. OKL. CTY. BD. OF EQUAL., 678 P.2d 233 (Okl. 1983):

[7,9] a. Lemon II involved the fashioning of a decree in equity....While our pleading code purports to abolish the distinction between actions at law and actions inequity, "A party bringing an action is require to frame his pleading in accord with some definite, certain theory, and the relief to which he claims to be entitled must be in accord therewith; on appeal he is bound by the position and theory assumed, and on which the case was heard in the trial court." (cites omitted) ***U.S. v. Fogaley*** (C.A.Okl.1951) 190 F.2d 163; (cited omitted) A chancellor has power to do equity and mold a decree to the necessities of a particular case. (cites omitted) But in law, a trial court is limited to the particular issues framed by the pleadings. ***LaBellman v. Gleason & Sanders, Inc.***, Okl., 418 P.2d 949 (166). In the fashioning of a judgment, courts are less impelled to apply principles of equity. b. No compulsion on the part of public officials to perform statutory duties until otherwise directed by the courts is involved in the case at bar, in contrast to Lemon II.

[10] c. General Motors Corporation had a free choice as to whether it would rely upon the opinions and representations of public officials as to the constitutionality of the non-tax "agreements." It was under no compulsion to act in reliance. It could have

obtained a declaratory judgment prior to entering into the purported tax arrangement. instead, it relied upon the representations in the face of the Constitution and the laws of Oklahoma, and did so at its peril. (emphasis added)

APPENDIX K

References in the petition to which this is an appendix, refer to this Appendix K's footnotes.: [50], [51], [52], [53], [54],

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[50] *City of Lawton v. Lewis*, 566 P.2d 133 (Okla. 1977)

[1,2] ***Stipulations*** are agreements between counsel with respect to ***business*** between counsel with respect to business before the court, and are favored when signed to ***shorten*** or ***settle litigation***. 83 C.J.S. **Stipulations** §§ 1-17; *American Iron & M. Wks. Co. v. Insurance Co. of North Am.*, Okl., 375 P.2d 873. A stipulation ***admitting*** to existence of ***designated facts*** for purpose of trial is ***binding*** upon the *parties* and ***the court.*** *Smith Ogle*, 196 Okl. 295, 164 P.2d 992; *Yamie v. Willmott*, 184 Okl. 382, 88 P.2d 325; *Bruner v. Burch*, 179 Okl. 338, 65 P.2d 1215. (emphasis added)

[51] Hanlon et al. v. McLain et al., 242 P.2d 732 (Okla.1952)

[1] " A perfect ***title*** is one free from litigation, palpable defects, and grave doubts, and consists of both legal and equitable title fairly deducible of record." (cites omitted)...

[2] We agree that Oklahoma is committed to the "lien theory" of mortgages but the lien of a real estate mortgage is an encumbrance; it is a subject of litigation; it would prevent an owner from conveying a perfect title on any given day. In this case it was sufficient encumbrance or lack of title of such magnitude as to cause both grantors and grantees to lose their property in the subsequent foreclosure...

[7] For a definition of "***disclaimer***" grantors cite 26 C.J.S., p. 1331, setting forth *various holdings by the courts which serve to advise us that definitions by the* ***courts are not uniform.*** (cites omitted)... The office, purpose and function of a disclaimer, authorized by our statute, 12 O.S. 1951 § 926, is to admit plaintiff's claim, set forth in the petition and to permit the disclaiming to be discharged with his costs. "*** A disclaimer is not an answer or defense plea, but it is ***an admission of***

plaintiffs rights, Tull v. Wilbarger County (Tex.Civ.App.) 36 S.W.2d 316; and a judgment thereon would **not have the effect of finding or establishing anything in the defendant's favor. ***"** Hansen v. Holland, Tex.Civ.App., 65 S.W.2d 510, 512. (emphasis added)

52 Petitioner's "Appellant's Brief" (opening brief on appeal below) 10/02/89 page 1:

I. Oklahoma State Supreme Court Jurisdiction.

1. The appeal decisions 03/01/89 and 02/01/89 is perfected 03/01/89 and htis brief is filed in due times. De has standing as a personal suretor under U.S. v. Fed.Ins.Co., 634 F.2d 1050 (10th Cir. 1980); other capacity as an "***aggrieved***" party, 12A O.S. § 1-201(2), CLEARY PETROLEUM CORP. v. HARRISON, 621 P.2d 528, asserting claims by his attorney in W.D. Okla. No. CIV-87-0265-Phillips, J. ("*265*"), referred to herein as *265*, based on De's claims of good faith reliance on advice of an attorney, herein, on REA v. WICHITA MORTG. CORP., 747 F.2d 567 (W.D.Okla., Thompson, J., 10th Cir. 1984). Appellee/Defs abandoned affermative defenses, and are barred to raise new matters herein, 12 O.S. 992, Arkansas Louisiana Gas v. Cable, 585 P.2d 1113 (Okl. 1978).

53 "Basham is not and never has been an attorney. He is making statements herein, relying on advice of counsel shown to have been made to him and to third parties he had [and] has a right to rely

on, e.g. the January 18, 1985 opinion letter by Robert G. Boren [Bank of Newcastle's C-84-373 attorney of record at the time]

> This legal opinion is being made for your convenience and **may be relied upon by persons dealing with your corporations and by your corporations, as my personal opinion as an attorney at law construing the various agreements and affidavits examined by me referred to below.**

thus to be, and relied, on by direct reliance by Basham, by the third party right Basham is exercising in reliance to do so upon: BRADFORD SECURITIES v. PLAZA BANK & TRUST, 653 P.2d 188 (Okla. 1982); and by his counsel of record No. CIV 87-265-P W.D.Okla., now on appeal in the TENTH CIRCUIT COURT OF APPEALS, No. 88-1336 and 88-1343, said case and its appeals are hereinafter referred to as "265". Specific claim is made to good faith based on said reliances on counsel, claimed on: REA v. WICHITA MORTGAGE CORP., 747 F.2d 567 (10th Cir. 1984).

The latest information known to Basham when verifying the matters herein and below is that the time for presenting Appellants opening brief [in] said appeals is being tolled by **10th.Cir.R.27.1.3.** Awaiting decision on the motion for summary disposition served 08/22/88.

54 The pages numbered with a numbering machine that appear in the

record appended to that affidavit are referred to herein as "*AR*" or "*Ex*". E.g.. At ("*AR* 584-681") is "*Ex A*" a copy of the "02/01/84 *affidavit*" whereby the bank president admits deceits materially misled Petitioner when De entered into the *10/15/82 and 02/03/83* express transactions "until *January 25 and 26, 1984*. Wherein the bank president's 02/01/84 affidavit and the BANK admit they never revealed the fact that the BANK was holding the : "stock certificates", and specifically admit that the banks records had contemporaneous notice made on the bank's official records to regulators 07/09/82 of the fact Mike's Health Center, Inc. corporate loan proceeds were in fact used to pay off the debts owed the bank by its management Deborah and Mike Feroli and to pay off debts owed the bank by their other corporation Tri-City Health Center, Inc.; and admit that those facts were successfully covered-up from Petitioner and L. A. Blankenship at least until 01/24/84. That affidavit was notarized 02/01/84 by "Virginia Goldsmith" another officer of that bank. E.g. "*Ex B*" (*AR* 682-774) is the agreement, with its initialed exhibits. That pervasive "*C-84-3*" agreement is *judicially executed compromise and settlement agreement* done *02/07/84*. As J. Ewing himself ordered 01/03/84 then again on

02/06/84 to "continue" to be done by the ***Visitor*** of the C-84-3 Court. It is signed on AR 696 by its parties including the C-84-3 Visitor. At AR 697 appears the service agreement the Visitor executed with "CFC PR" pursuant thereto, at AR 700 appears the service agreement the Visitor executed with "CFC PV." These judicially executed matters are in C-84-3 Visitors reports filed 10/24/84 and 10/21/85 (R. 1289 through 1479 [R.1370 stipulations 02/01/85 on De's $10,900.00 due unpaid wages]). That order is not vacated.

55 **Mainord v. Sharp**, 569 P.2d 546 (Okl.App. 1977)

[2] The "real party in interest" is the party legally entitled to the ***proceeds*** of a claim, *Aetna Cas. and Sur. Co. v. Associates Transports, Inc.*, 512 P.2d 137 (Okl.1973), or the party that has "the right to receive and control the fruits and benefits of the litigation." *Schoenfld v. Blair*, 366 P.2d 414, 415 (Okl.1961). See also *Conely Drilling Co. v. Rogers*, 191 Okl. 667, 132 P.2d 959 (1943); *Schmidt v. Nash*, 203 Okl. 21, 217 P.2d 830 (1950), and *C & C Tile Co. v. Indep. Sch. D. No. 7 of Tulsa Cty....*

[3-5] A shareholder in a corporation has not title or legal right to the assets of the corporation. *Cooke v. Tankersley*, 199 Okl. 634, 189 P.2d 417 (1948). ***The shareholder's property rights are limited to a proportionate share of the dividends, and assets on dissolution.*** *Cooke v. Tankersley*, supra. See also *Wilhelm v. Consolidated Oil Corp.*, 11 F.Supp. 444 (N.D.Okl. 1935) aff'd 84 F.2d 739 (10th Cir. 1936). While the ***fiction of the corporate entity may be disregarded the "veil is pierced" only where the corporate entity is used to defeat public interests by protecting fraud, defending a crime, or perpetration of other wrong.*** *Gulf Oil Corp. v. State*, 360

P.2d 933 (Okl.1961); *Mid-Continent Life Ins. Co. v. Goforth*, 193 Okl. 314, 143 P.2d 154 (1943); ***Selected Inv. Corp. v. Duncan***, 260 F.2d 918 (10th Cir. 1959) cert. den. 359 U.S. 914, 79 S.Ct. 584, 3 L.Ed.2d 576, and *Edgar v. Fred Jones Lincoln-Mercury of Okla. City, Inc.*, 524 F.2d 162 (10th Cir. 1975.

[6,7] ...The real party in interest rule is designed to protect the defendant by insuring that the party with the ***legal right to sue brings the action.*** *Oklahoma Wildlife Federation, Inc. v. Nich*, 513 P.2d 310 (Okl.1972). (emphasis added)

56 PETROMANAGEMENT CORP. v. ACME-THOMAS JOINT VENTURE, 6 TCS 2 (10th Cir. 1/6/88), 835 F.2d 1329, (10th Cir. 1988).

[7] Under the doctrine of res judicata or claim preclusion, "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *Brown v. Felsen*, 442 U.S. 127, 131, 99 S.Ct. 2205, 2209, 60 L.Ed.2d 767 (1979). Determining what constitutes ***a single "cause of action"*** has long been a troublesome question. *See* 1B J. Moore, J. Lucas, & T. Currier, *Moore's Federal Practice* ¶ 0.410[1] at 350 (1984). In making this determination, we adopt the ***transactional approach of the Restatement (Second) of Judgments***:

"(1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see §§ 18, 19), the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of transactions, out of which the action arose.

(2) What factual grouping constitutes a "transaction", and what groupings constitute a "series", are to be determined pragmatically, given weight to such considerations as whether the facts are related at the time, space, origin, or motivation, whether they form a convenient trail unit, and whether their treatment as a unit conforms to the parties expectations or business understanding or usage.

Id. at § 24. Several circuits have accepted this transactional approach. (multiple Cir. & S.Ct. cites omitted)

...All wells drilled as contemplated herein will be operated pursuant to [a] Model Form Operating Agreement.").

...Even if seperate contracts governed the drilling operation of the

wells, the transactions challenged in the ***complaints in Petro I and Petro II*** are sufficiently connected transactions" to ***prohibit piecemeal litigation.***

Although the ***Petro II*** complaint refers to the five seperate well contracts, it attaches only one sample contract, and the breaches alleged, quoted in Part I of this opinion, appear to affect all of the allegedly seperate contracts equally. We are satisfied that had such theories been presented at trial in ***Petro I*** and had judgment been entered for defendants, the judgment could have been asserted as a res judicata bar to any similar claims not only as to the Pribil #1 contract but also to any of the others *Cf. Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971)(plaintiff estopped from asserting issue it litigated and lost against another defendant); *Parklane Hosiery, Inc. v. Shore*, 439 U.S. 322, 99 S.Ct. 645, 58 L.Ed. 2d 552 (1979)(defendant may be estopped from litigating issues previously litigated and lost against another plaintiff). (emphasis added)

57 Plaintiffs, Bank of Newcastle, Continental Fitness Center PR, Inc. and Continental Fitness Center PV, Inc., by their 05/08/85 joint motion (that still wants for a decision ever since 1985), stipulated to and made their motion based on the following of their statements:

> 7. *Orders* entered in the ***VISITORS ACTION*** on ***January 3, 1984 and February 6, 1984*** have a material effect that estops relitigation of matters settled therein arising from the doctrines of "RES JUDICATA" "ISSUE PRECLUSION" and "COLLATERAL ESTOPPEL" that arise from both state and federal law...
>
> 13. That, with the exception of the provision of paragraph 12 of the pleadings that commenced the VISITORS ACTION, the Order entered therein on January 3, 1984 is res judicata, and the parties shown therein to have subscribed documents that formed the basis of that action are estopped to relitigate the provisions of each express paragraph that

was ratified by and arose from the February 3, 1983 matter shown therewith...

37. That on *February 7, 1984*, in partial *compromise and settlement* of controversies in C-83-232, the adverse parties BLANKENSHIP and BON, who had been joined therein as adverse parties in 1983, settled some of the controversies in dispute between them in C-83-232 and made express reservation of the right to litigate every "legal and/or equitable chose" that had not been settled... (emphasis added)

58 Petition For Rehearing *04/17/89* (*"PRHF"*) Brief *04/17/89* (*"BRHF"*); De's *principal Brief 10/02/89* as (*"APB"*), Briefs *11/09/89* as (*"APRB"*) and *05/20/91* as ("APBRH") and their *Abbreviations* and *definitions of terms*. See: De's principal Brief pages p.1-8, *p. 20\29* f.20 *"APB"*:

"The court may take *"judicial notice" ("JDN"* at any time of *"adjudicative facts ("AFACT")*, GRAYSON ELEC. v. SACREMENTO MUNICIPAL UTILITY DIST., 571 F.Supp. 1504...*"You"* refers to every judge having the power to make and action on decisions herein...*"HOLLOWAY"* refers to...VAN SICKLE v. HOLLOWAY, 791 F.2d 1431 (10th Cir. 1986)..., respectively, *"TRANSACTIONAL APPROACH"* analyzed in *PETROMANAGEMENT* v. ACME-THOMAS, 6 TCS 2 (10th Cir. 1/6/88)...Lou Ann Blankenshp Roberts (*"LAB"*) 04/12/87 deposition...identify Exhibits machine numbered 1-1683 and ...Ex "654" (*"654"* references to De's attorneys argument and authority in its pages *"654@,"* ...and the same exhibits acknowledged in *"Ex A thru X"*, machine numbered [*"1-449" "584-682"* and Bank of Newcastle (*"BANK"*) February 1, 1984 affidavit *"682-805"*] those numbered pages are referred to by number as ("[R.]")... Identical affidavits were entered 05/07/87, notice of ...over 1,600 pages of acknowledged title, stipulations, judicial executed and private commercial transactions document exhibits) of ...De...*disclaimers* (admitting all assertions by De...Hanlon v. MClain, 242 P.2d 732...entered on *05/08/87* in *265* by Boren, Esq. (placing *actual possession of all Mike's Health Center, Inc.* [*"MHC"*] *put* original *stock* certificates into...where that stock remains

today, by Ferolis, by THE BOARD OF COUNTY COMMISSIONERS OF McCLAIN COUNTY, OKLA., BOARD OF COUNTY COMMISSIONERS OF GARVIN COUNTY, OKLA, AND BY GARVIN COUNTY TREASURER, By Tully McCoy, County Attorney, by R.D. Gaston, Esq., Okla. Tax Commission ***disclaimed*** in 265 Dkt p. 70... (emphasis added)

p. 7 ¶6...The C-84-3 court ordered immediate execution by its **Visitor** to execute the 2 transactions she did 01/04/84 ([f.9 ExA's "ExA" [4. 72-73] and "Ex K" [R.74-76]) the ***02/07/84 C-84-3 judicially executed transaction*** wherein the ***BANK*** *and its attorney* [named therein *"Alan Brinkley"*] ExB¶*60 consented* to C-84-3 02/06/84 *"continue"* effect; and thousands of commercial executed transactions.(f.10 **C-84-373** ***04/08/85*** p. 44 ¶132)

¶7. Pursuant to J. Ewing's orders in C-84-3 the ***Bank ratified and consented to his orders***, id., ***stipulated to C-83-232*** ExB¶10 p.2[4.57], ***narrowing issues*** left in question after the ***covenants not to sue*** ExB¶24 p.5[R.60] on those remaining issues not ***settled*** by that ***consent judgment*** 02/07/84 (C-84-3's ***executed*** 01/03/84 and 02/06/84 ***Orders...to liquidate those issues in C-84-373; governing over cases commended 05/06/85 after the BANK liquidated 3:00***...C-85-199, ***C-85-200, C-85-201.***

8. "Plaintiff" Appellees Cheryl K. Tracy and Jack F. Tracy contend they are bona fide purchasers without knowledge...their claims stating on their face they are *"**controlled by the February 7, 1984**"* terms naming De *ExB's ExL[R.118-160].* (emphasis added)"

59 LANGLEY v. FDIC, 108 S.Ct. 396 (1987)

> [6] Respondent conceded at oral argument that the real defense of **fraud in the factum**-that is, the sort of fraud that procures a party's signature to an instrument **without knowledge** of its true nature or contents, see U.C.C. § 3-305(2)(c), Comment 7, 2 U.L.A. 241 (1977)- would take the instrument **out of § 1824(e), because it would render the instrument entirely void**, see Restatement (Second) of Contracts § 163 and Comments a,c; E. Farnsworth, supra, § 4.10, at 235, thus leaving **no "right, title or interest" that could be diminish[ed] or defeat[ed].**" (emphasis added)

60 Petitioners Affidavit in support of his summary motions filed 12/30/88 at page 14:

¶16 Had the $333,000.,00 trust fund the fiduciaries of the bank had a duty to disburse to C-84-3 to be held by the court therein, rather than in C-85-200; by virtue of the prior superior, in rem and in personam jurisdiction of C-84-3 governing over its impressed res put in effect by the judicial executions 02/07/84 (Ex B); the IRS 26 U.S.C.A. § 6672 "trust funds" held by the responsible parties in possession of those funds embezzled from those lawful purposes on and ever since 05/16/85 when they should have been disbursed to the IRS for those purposes and the residue to satisfy the 02/07/84 obligations existing in C-84-373; then: those IRS claims would have been satisfied, the need that does exist for Basham to exercise *standing* he does have to enforce the 02/07/84 agreement to cause those trust funds the IRS would not now be falsely accusing Basham of holding possession of those trust funds as it is now doing, when, in fact the parties taking possession of those monies from Bank of Newcastle 05/16/85 (that will require discovery to issue under court order to fully identify) would not be the issues they are, and the services to Continental Fitness Center Limited Partnership's subsidiaries fitness center members would not have been undermined by that trust funds being so embezzled and

wrongfully withheld from the C-84-3 court and lawful objectives of its 02/07/84 executed "agreement."

61 Decisions 01/04/84 and 02/06/84 in *C-84-3* unquestionably did intend to and Order ***immediate execution.*** That sure required immediate appeal. Mann, id., Kawfield Oil Co., supra. The decisions that protect De's positions herein by ***full faith and credit*** character. They affected rights so ***substantial*** they were immediately appealable.

> WOODS PETROLEUM CORP. v. SLEDGE, 632 P.2d 393 (Okla. 1981) [5,6] An order is a final order when it determines and affects a ***substantial rights.*** (f.5) 12 O.S. 1971 § 953. Order No. 128362 by which Woods was granted permission to drill three additional wells was permitted to lapse under its own terms. ***Instead of appealing from the order,*** Woods brought a quiet title action in District Court. This ***circumvention of the appellate process is an unpermitted collateral attack*** on the Order of the Commission.
>
> The Kawfield Oil Co. court considered over ruled objections final. The unappealed 02/06/84 C-84-3 decision ***without*** objections is as final as the state decision in VAN SICKLE v. HOLLOWAY, 791 F.2d 1431. (See: f.1 herein) On ***02/06/84 C-84-3 J. Ewing*** Ordered execution "***continue***". On ***02/07/84*** the ***C-83-232*** attorney Alan Brinkley (R. ¶7 12/30/88[*ExB*¶60]) named in ***¶60*** 02/07/84 made stipulations ***binding on this court, and all Appellees by and under the BANK,***

City of Lawton v. Lewis, 566 P.2d 133 (Okla. 1977) [1,2] *Stipulations* are agreements between counsel with respect to ***business*** between counsel with respect to business before the court, and are

favored when signed to ***shorten*** or ***settle litigation***. 83 C.J.S. **Stipulations** §§ 1-17; *American Iron & M. Wks. Co. v. Insurance Co. of North Am.*, Okl., 375 P.2d 873.

> A stipulation ***admitting*** to existence of ***designated facts*** for purpose of **trial** is ***binding*** upon the *parties* and ***the court.*** *Smith Ogle*, 196 Okl. 295, 164 P.2d 992; *Yamie v. Willmott*, 184 Okl. 382, 88 P.2d 325; *Bruner v. Burch*, 179 Okl. 338, 65 P.2d 1215. (emphasis added)

that expressly constrain behaviors to comport to its express terms *and* according to law of ***compromise and settlement*** TAYLOR v. GILMARTIN, 686 F.2d 1346 (W.D.Okla., 10th Cir. 1982, cert. den. See 103 S.Ct. 788).

> At p. 1361 [16] ... One who covenants not to sue doe not surrender his action, but merely agrees not to enforce it. Under ***Oklahoma law a covenant not to sue*** in favor of one joint tort-feasor ***does not release the others unless it was so intended***. *Allen v. Ouachita Marine Ind. Corp.*, 606 P.2d 607, 609 (Okla.App. 1980).

Had De not relied on those facts and law as he did, that they so settled some issues and expressly constrained and reserved others to C-84-373 litigation (***12/30/88 p. 19***) De would have not changed his positions as he did to his detriment and would have brought suit in 1984 on disclosures in the BANK affidavit 02/01/84 ***(Ex A)*** 02/01/1984. De did so rely on those facts and laws. All the elements that trigger estoppel bind 02/07/84's parties to positions

they and Tracys ***assumed*** in ***Ex B*** are present on this record and invoke De's rights and standings to the protections and benefits of the principle that those parties are barred to alter their ***02/07/84 assumed positions*** in any manner adverse to De. (***APBRH*** p.1) Arkansas Louis. Gas. Co. v. Cable, 585 P.2d 1113 and Ellis v. Ark. Louis. Gas Co., 609 F.2d 436 (E.D.Okla. 10th Cir., 1979 cert. den. 100 ***S.St.*** 1653)(***On Okla. law***)

Appellees do not argue otherwise. The fact these decisions, stipulations, covenants not to sue ***in ambit of litigation*** are so clear and final as ***Holloway*** (f.1), make clear points of error on appeal that require the Appeal Court decide for De's positions so fully adjudicated and stipulated to and governing parties in and after ***1984***.

62 La Bellman v. Gleason & Sanders, Inc., 418 P.2d 949 (Okl. 1966);

> [2] Furthermore, the jurisdiction necessary to empower a court to render a valid judgment is of three types: **(1)** Jurisdiction of the parties; **(2)** jurisdiction of the general subject matter; and **(3)** jurisdiction of the matter which the judgment professes to decide. If any one of these requisites is lacking, the purported judgment is a nullity and is void....
>
> [17] It does not necessarily follow, however, that where part of a judgment is void the entire judgment is a nullity by reason thereof, unless the valid portion of the judgment is inseparable from the part declared to be void.

State v. A 1977 Chevrolet Pickup Truck, 753 P.2d 1356 (Okl. 1988)

[3,4] One ingredient essential to the validity of any judicial order is jurisdiction. *La Bellman v. Gleason & Sanders, Inc.*, 418 P.2d 494 (Okl. 1966),
Subject matter jurisdiction is invoked by pleadings filed with the court. In *Consolidated Mtr. Frt. Terminal v. Vineyard*, 193 Okl. 388, 143 P.2d 610, 612 (Okl. 1943) we observed:

> "In the opinion of this court it was pointed out that jurisdiction exists when the courts have the power to proceed in a case of the character presented, or power to grant the relief sought in a proper cause; that the power to proceed is acquired by an application of a party showing the general nature of the case and requesting relief of the kind the court has the power to grant; that ordinarily jurisdiction is invoked by pleadings filed by the parties.

AFFIDAVIT OF SERVICE.

I, DeWayne W. Basham, after first being duly sworn and upon my oath, state that today 3 correct copies of the foregoing Petition For Certiorari and Appendix thereto was mailed, by deposit in the United States Mail first class postage prepaid; on this 17th day of January, 1992 to; each of: Cheryl K. Tracy and Jack F. *Tracy*, Esquire 201 W. Main St., Purcell, Oklahoma 73080; Bill G. *Kuhns*, Esquire, 917 Dalzell St., Shreveport, La. 77104-2120; Attorney General of State of Oklahoma, Room 112, Oklahoma State Capital Building, Oklahoma City, Oklahoma 73105; Solicitor General, Department of Justice, Washington, D.C. 20530; Tully *McCoy* and Regeinald D. Gaston, Esquires, McClain County Courthouse, Purcell, Oklahoma 73080; Michael P. *Sullivan*, Esquire, P. O. Box

160, Duncan, Oklahoma 73534; S. Steve *Culbert*, 2713 S. W. 63rd Street, Oklahoma City, Oklahoma 73159; Ted Haxel, Esquire, P. O. Box 667, Purcell, Oklahoma 73080, and Tom *Hunter*, Receiver, 231 W. Main St., Purcell, Oklahoma 73080.

DeWayne W. Basham

DeWayne W. Basham

Oklahoma County)
) ss.
State of Oklahoma)

Acknowledgment.

Before me, the undersigned Notary Public, DeWayne W. Basham, after first being duly sworn and placed upon his oath; made the foregoing affidavit for the purpose stated therein; on this 17th day of January, 1992.

-seal- My Commission expires: 3-28-92.

James C. McGuire, Notary Public

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